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VOL. V.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

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Term No. 307

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1921

(File No. 28164.)

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 8959

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 15, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 8960
MR. O'BRIEN, of Counsel for defendant Swann.

HENRY M. BRUNDAGE resumed the stand.

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. Mr. Brundage, your statement as to rentals received from the Astoria Company set forth on page 2900 of the record, is there any memorandum anywhere in the files of the Company that gives the details of the property rendered, facilities afforded, conditions under which they are to be afforded, and so forth? 8961

A. Why, there is a record, Counsellor, that I had here with me the other day, showing how I considered the charge; showing the sheet and the amount to be—and the values based upon Wheelock's tables and the rate and the rents paid the city for the 21st street bulkhead, and the discharging apparatus, both as to land, and the computation

8962 I made as to the rental to be charged and the ten per cent. I think I have got that already in the record, sir.

Q. Well, what do you refer to, is it something from the files of the Company?

A. Yes.

Q. Is it a memorandum that was made; have you got it with you now?

A. I had several copies of that made, Mr. O'Brien (examining papers). I do not seem to have any other paper here with me, Mr. O'Brien. I made several copies of them, and I think I gave you one the other day, as I remember it, sir.

8963 Mr. Ransom: Is this it (handing paper)?

The Witness: Yes, a tabulation like that. This, Mr. O'Brien (handing paper).

Q. Outside of this memorandum which is in the record at page 2900, was there any memorandum of the agreement made between the complainant and the Astoria Company as to these facilities, of which the details are set forth?

A. Nothing more than my scratch memorandum here, my working papers, I might call them. I think I testified the other day, Counsellor O'Brien; if I did not, I should have, that to the best of my

8964 knowledge, there was no formal agreement, no lease drawn between the two companies.

Q. Is there correspondence between the companies which would shed some light as to what the arrangements were, and what was to be—the covenants or the agreements or conditions on which this arrangement was to be carried out?

A. I believe not.

The Master: I think this is already fully covered, Mr. O'Brien.

Mr. O'Brien: The questions have been asked skirting on the ideas I am bringing out; there

have been some questions asked, but it is hard 8965
to proceed without overlapping something that might have been asked by Mr. Chambers. The point I want to bring out now is this—I recall the witness said it was an oral arrangement, but there are some things I want to find out about it that are not covered by the answers given.

Q. Take the East 21st street station agreement; that covered certain blocks, did it.

A. Certain blocks of properties, yes, sir.

Q. Have you got the data that would indicate those there? 8966

A. Yes. At 21st street station there were two lots of property in block 987, 29,745 square feet, and of that there was used 4,900 square feet charged to Astoria. And in block 979, 3,500 square feet, making 8,500 square feet at the 21st street station.

Q. Does the rental include the use of any other land there in or about the 21st street station?

A. No other land.

Q. No other land?

A. No, sir; that is all the land I charged them for.

Q. Is there any part of the 14th street station used by the Astoria Company? 8969

A. There was not at the time this arrangement was made.

Q. Is there to-day?

A. I could not say, sir.

Q. Are you acquainted with all of the rentals of the Company?

A. In a general way, yes; and I have already testified, sir, that this arrangement made as of January 1, 1909, so far as charging the Astoria Com-

8968 pany, still stands, there has been no change or any adjustment in this rental.

Q. Did the testimony which you gave the last time you were on the stand embrace all the rental receipts of the complainant company from any source?

A. Oh, no.

Q. I am speaking now of rental of facilities.

A. I only testified, sir, as to two rentals, the rentals charged by the Consolidated to the Astoria Company; the rentals charged by the Consolidated for the use of certain mains in the Borough of the
8969 Bronx, charged to the Central Union Gas Company.

Q. Well, are you going to testify as to certain other facilities or rentals from them some time later?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Q. Will you state what the other rentals are?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, I would like to call attention to the scope of the subject presented by the testimony of the witness. He is put on the stand and through him these books
8970 are put in evidence, and these books are written in the language of bookkeeping, and as I take it, the witness is the interpreter and that we are within our rights when we seek to interrogate him as to his knowledge of these books and as to the meaning of the language in them, and as to his memory and as to his experience with the records of the company. Now, I call his attention to this question of rental from facilities. They put him on the stand and they ask him about certain rentals, and while they have

not said so in so many terms, the inference 8971
would be, the natural inference, that in his direct testimony the last time he was on the stand, he had covered all the rentals.

The Master: He was called to prove two general items: The charges made against the Astoria Light, Heat & Power Company and the Central Union in the Bronx. That is all. I take it, Mr. Brundage, that all other charges for rental appear in the books?

The Witness: They do.

The Master: Do not these charges appear in the books? 8972

The Witness: They do, sir.

Mr. O'Brien: I take an exception, with due respect to your Honor, to that question.

Q. Will you tell me with what other companies rental facilities are had?

Mr. Ransom: I object to the question as not within the scope of this witness' examination. The books are in evidence, the witness has not been interrogated with respect to these two items.

Mr. O'Brien: Before you make a ruling, will your Honor hear me?

The Master: What is the use of hearing you? 8973
I am going to decide in your favor. I think counsel is justified in asking the witness to point out in these books any evidence of other operating charges.

Mr. Ransom: Exception. He was put on the stand because he was the man who had something to do with the computation and ascertainment of what they should be.

The Master: That is all, he may not know anything about the other items; but he can

8974 point them out. Would the 1918 ledgers show any other operating charges?

The Witness: You will find, your Honor, in the 1918 books, credits to Miscellaneous Rent Revenue and to Joint Gas Rent Revenue, for charges made by the Consolidated to other companies.

The Master: Suppose you get that account.

Q. Would that be in ledger A or B?

A. That should be in ledger A.

Mr. Ransom: This, of course, is a matter that is covered in schedules 6 and 7, on which the examination of Mr. Teele has been based.

8975

The Master: Yes, I think that is so, Judge Ransom, but these books are in evidence, this witness has testified to the way they are kept, and I think I will let Mr. Brundage answer these questions.

Mr. Ransom: I have no objection to the knowledge of the witness being exhausted on that subject.

The Master: The witness may not have any knowledge about it, but——

Mr. Ransom: I think he has knowledge of it, but I expected to call the man who made the

8976 computation and determination of what the basis of charge should be.

The Master: Let us see what Mr. Brundage knows about it.

Q. I hand you operating ledger A for the year 1918, being Complainant's Exhibit No. 189, and ask you to tell me where that account shows these rentals?

A. On page 1153 of the ledger referred to I find two accounts, one entitled, "Miscellaneous Rent Revenue", the other entitled "Joint Gas Rent

Revenue". To those accounts are credited such 8977
charges as are made to various debtors for the use of property belonging to the Consolidated Gas Company.

Q. And in the opposite column the balance is struck by an entry in the debit under the title "Debit"?

A. The entry to which you refer transfers the balance in the account at the end of the year to the company's profit and loss account.

Q. Why is that done?

A. Because there is no other known method by which you close your accounts into your surplus 8978
account at the end of the year, sir.

Q. Is profit and loss in these books a surplus account?

A. Yes, sir; we call it profit and loss.

Q. What is your definition of profit and loss so far as these books are concerned, how would you describe that?

A. How would I describe the account?

Q. Yes.

A. Profit and loss account on the company's balance sheet, or in its books, represents the difference between the assets on one side and the liabilities, 8979
capital stock and the reserves on the other.

Q. Is it the same as or synonymous with surplus, and synonymous with reserves?

A. It is not synonymous with the reserves, but I should say it was synonymous with surplus.

Q. Does it operate in this particular instance the same as a suspense account?

A. No, sir; there is credited to this account, counselor, each month, the amount of revenue collected and, as on the end of the year, the credits aggregated $361,601.12, and the closing entries were

8980 made as of December 31st, 1918, that credit balance is transferred to the profit and loss account.

Q. May we assume, then, for the year 1918, that page 1153 of this exhibit, the two accounts Miscellaneous Rent Revenue and Joint Gas Rent Revenue embrace all rentals from any source of facilities from other companies? Well, just a minute, Mr. Brundage, I do not want to be peremptory with you, but I am asking you partly to test your knowledge and memory, and may you not say that without consulting the index books?

A. Well, I will say that those two accounts rep-
8981 resent all of the rentals collected during the year 1918.

Q. Do they include the Astoria rentals that we have referred to on page 2900?

A. Yes, sir.

Q. And the rentals received from the Central Union Gas Company for the use of certain mains?

A. Yes, sir.

Q. As described by you in your testimony last week?

A. Yes, sir.

Q. And then is this confined to the rental of facilities or does it embrace rentals from land?

8982 A. It embraces some rentals from land.

Q. So that the $361,601.12 would embrace the total rentals from all sources, land and facilities, received by the company during the year 1918?

A. No, it would not.

Q. What would it not include?

A. The aggregate of $361,601.12 and $219,787.84 would represent the——

The Master: It is for 1918 anyhow, not 1919.

The Witness: 1918, your Honor.

Q. The last amount that you read, $219,787.84, being the balance of the joint gas rent revenue account? 8983

A. Yes, sir.

Q. Explain the title of this last account, "Joint gas rent revenue"? Does that mean the use or rental of mains?

Mr. Ransom: I object to the question. That is a definition which is prescribed by force of law, which neither this witness nor this Court is responsible for.

The Master: That is all right, go ahead and tell us what it is. 8984

Mr. Ransom: The definition is set forth in a provision of law.

The Master: That cannot do any harm.

Mr. O'Brien: That has not any sanctity, as I told you many times before, for me.

A. This account is sent to the commission and we credit to it, as required by the uniform system of accounts, any rental received from a facility or property partly used by us and partly used by somebody else.

Q. That means the gas making apparatus; you do not mean it covers the rental and appliances of any kind? 8985

A. No, not appliances. I am speaking now of plant and land. For instance, that item you are now questioning me about, the Astoria, I am testifying that that was charged for property partly used by us and partly used by the Astoria, and under the classification of the uniform system of accounts we are obligated to credit that to what they call joint gas rent revenue.

The Master: Do you have another account for land leased out, that is owned by the com-

8986 pany but not used jointly with some other company?

The Witness: Yes, we credit that to that account, miscellaneous rent revenue and joint gas rent revenue.

The Master: There are two accounts?

The Witness: There are two accounts.

Q. Does this amount $361,601.12, the total of the miscellaneous rent revenue account, include the rental of the 15th Street Building?

A. Yes, that is credited.

Q. There aren't any in either of these accounts to
8987 describe the items except the one entry, sundry debtors, each month?

A. That is right.

Q. And reference must be made to the sundry debtors to find the detail of these totals that are carried along each month?

A. Exactly so.

Q. You only carry the totals each month, and not the individual items for the individual rentals?

A. The details are carried in the sundry debtors, and summarized in this item.

Q. And this reference here entitled, "Voucher or Journal Entry Number" refers to what books?

8988 A. To the journal.

Q. To the sundry debtors ledger?

A. No.

Q. What is that?

A. Sundry debtors is journalized by one book entry each month, sundry debtors to sundries, for all the various credits.

Q. Then to get back into that repository of information you have got to go through the journal?

A. Yes, but in actual practice an accountant

wouldn't do that, he would turn to the sundry debtors at once. 8989

Q. Would he turn to the sundry debtors for the month?

A. Yes, there is an entry each month, and he would turn up the month.

Q. He might have to go back to the month previous if it has been journalized?

A. No.

Q. Well, let us try that?

A. All right.

Mr. O'Brien: I call attention to Mr. Carter's audible comment on the examination of the witness. 8990

The Master: I won't pay any attention to it, because I didn't hear it.

Mr. O'Brien: I call your attention to what he said.

The Master: I didn't hear what he said.

Mr. O'Brien: If there are to be spectators here I submit that they be required to conform to the decorum of a court room.

The Master: Ask your next question.

Q. Turn to the first account here, January, $30,089.50 which is on page 1153, in the account "Miscellaneous Rents and Revenue"? 8991

A. I call attention to this entry, sundry debtors entry No. 72, crediting rent revenue, $30,089.50. Here is the entry in the journal, on folio 28, entry No. 72, sundry debtors to sundries.

Q. You say that this was a page of the journal?

A. No, that is a number of a journal entry, Mr. O'Brien.

Q. Didn't you state when I asked you about the journal when you were last on the stand that the serial numbers of the various items were just put in there to give them in order?

8992 A. I did. All these entries are numbered, the journal entries are all numbered serially from No. 1, the first entry in January, to the end of the year.

Q. Did you indicate that they were put in there for the purpose of reference and cross reference in other books?

A. I believe so. The journal is posted and reference made in this column provided for that purpose as to the number of the journal entry. In this particular case, the sundry debtors is for the month of January aggregating two hundred and seventy-eight thousand and odd dollars. Here are all the
8993 accounts that were credited and we turn on until we find the one you are looking for, which is miscellaneous rent revenue, $30,089.50, posted here, and the journal folio record, 1153 referring to this entry in the journal.

Q. You mean in the operating ledger?

A. This refers to the entry in the operating ledger. This (indicating) refers to the serial number of the journal entry from which it was posted.

Q. Then one book refers to the other, and the other refers back to that book, is that correct?

A. Absolutely.

Q. The journal refers to 1153 in the operating
8994 ledger?

A. Yes.

Q. And the operating ledger refers to 1153 in the journal?

A. No, to the serial number.

Q. To the serial number 72?

A. Yes.

Q. Now, there are not any items given, are there?

A. Yes, quite some items, but the full details of that entry——

Q. I say, none of the details of the title, "Miscel- 8995
lancous Rent Revenues" are given?

A. By properties? No, it does not show that.

The Master: Why, Mr. O'Brien, haven't you learned by this time that you don't get any real information from a journal?

Mr. O'Brien: Well, I didn't know about this.

The Master: You get no real information from a journal.

Mr. O'Brien: I didn't know about that.

The Master: It always goes back to sundry debtors or the cash book or the pay roll book, or something else. 8996

Mr. O'Brien: The witness said these items were shown in the journal.

The Master: Don't waste time on the journal.

Q. So, we have to go back to sundry debtors to get the information as to how that total amount is made up?

A. You certainly do.

The Master: Objection sustained.

Mr. Ransom: He has gone over this so many, many times.

Q. Would this same practice obtain prior to the year 1918?

A. The same practice goes back all the years for 8997
which the books are in evidence.

The Master: You have used twenty words to say "yes".

The Witness: If I fill up the record too much, I am sorry. I want to make it brief.

The Master: Don't get into bad habits. Answer yes.

The Witness: Yes.

Q. So that to find out the items that go up to make up the total under this general subject, we will have to have the Sundry Debtors' book?

8998 A. You will.

Mr. Ransom: I object to the question.

Q. Will the items be set forth in detail there?

A. They are.

Q. Is there any place in the records of the company where the details of the apparatus are shown?

The Master: What do you mean by that?

Mr. O'Brien: Under the title "Use of Apparatus."

The Master: Where?

Mr. O'Brien: Page 2900 of the record, and I am referring now to rental of facilities.

8999 The Master: In other words, you are asking the witness whether you can locate in the books anywhere just what apparatus has been paid for?

Mr. O'Brien: Yes.

The Witness: Let me get this question very clearly. I don't know if I quite followed the question.

Mr. O'Brien: Will the stenographer read the question?

By the Master:

Q. Well on page 2900 and at different places, with reference to the different stations, you say,
9000 "Use of discharging apparatus"?

A. I did.

Q. Is there any book that tabulates or sets forth the discharging apparatus to which this charge is made?

A. Yes, I testified that the basis of that charge was the actual investment made by the company in certain apparatus, and if you go back in the books far enough you will find where that apparatus was bought and paid for, and that account can be brought up and summarized and proved here in

court, or rather, it can be better shown to the ac- 9001
countant.

Q. It is in the books?

A. It is in the books, yes.

By Mr. O'Brien:

Q. Where is it? You say this practice began in 1911?

A. No, I said it began as of January 1, 1909. Now, I am unable to sit here at this time and say to you definitely whether that apparatus was bought prior to December 31, 1908, or subsequent to it; but whenever it was bought it is a matter of record in the books, and we can find it. 9002

Q. You have the operating ledger here for that year. Will that show us?

A. For what year?

Q. 1909?

A. No, sir, it will not.

Q. Where will the detail be gotten?

A. You would have to analyze the fixed capital account as of December 31, 1908, the commission's system having provided that as of that date all the company's tangible property had to be carried to one account. If any of this property you are asking about, the apparatus for these three stations, was in our possession December 31, 1908, it 9003
would be necessary for me to go back and analyze that and find out what the cost included therein represented, the apparatus at these stations.

Q. Leaving the cost aside for a minute, on which you computed the amount of rental, will you state what the apparatus is that is rented?

A. Yes, I did so testify on Friday.

Q. Where is it?

A. It is the discharging apparatus at 21st Street,

9004 East, 42nd Street, West, and 111th Street, East, discharging apparatus.

Q. I am talking about 21st Street now. I will come to the other later.

A. At 21st Street there is some discharging apparatus located on the dock.

Q. What is it, is it a derrick, an engine, or what?

The Master: This witness told us before he didn't know.

Q. Who does know, Mr. Brundage, if you don't know?

A. I know to the extent of being able to testify
9005 that it is what the engineers know as discharging apparatus.

Q. Have you ever seen it?

A. I saw it at the time this arrangement was made.

Q. You don't remember what it is, whether it is some patented device, or a work put up by the company, or something that you brought from a hardware store, you can't tell us then what it is?

A. That is an engineer's question that I would not attempt to testify on.

Q. You say it is an engineering question to describe in general terms what you are paying this
9006 rental for?

A. I say it is an engineering question to describe apparatus to your satisfaction.

Q. Do you know, have you got the means to find out?

A. I know there was a discharging apparatus there in 1909.

Mr. O'Brien: I press the witness for an answer to the question.

Mr. Ransom: This is very much beyond the limits of the witness' direct-examination.

The Master: Next question. 9007

Mr. O'Brien: I asked the witness, your Honor, to tell me if he knows, and if he doesn't know where it can be found out just what that apparatus is.

The Master: Ask him another question.

Q. Where would the analysis of the fixed capital account be found as of December 31, 1908?

A. You will find the analysis of the accounts that were transferred to that account in the journal as of that date.

Q. In the journal for January, 1909?

A. I should say so. 9008

Q. Or the journal for December, 1908?

A. My recollection is that entry was made as of January 1, 1909, in obedience to the orders of the Commission.

Q. Each item was carried over or just the total?

A. The accounts as we then carried them were carried over to one account called "Fixed capital, as of December 31, 1908."

Q. Can you say as a matter of fact, Mr. Brundage, that there was apparatus used continually since 1909 to date?

A. By Astoria?

Q. Yes. 9009

A. No. I believe that there was, but I have no definite personal knowledge of that.

Q. Has that rental gone in every month in every year since?

A. We have charged every month one-twelfth of $25,000, each month in each year since 1909.

Q. Does the superintendent of that station make reports of the use of it, or is that a transaction that would be covered only by the main office?

A. Only covered by the main office.

9010 Q. Is it kept in repair by the complainant company, or are the repairs taken care of by the Astoria Company and included in the rental?

A. No, the complainant Company, the Consolidated Gas Company, takes care of it.

Q. What book would contain the details of that fixed capital account as of January 1, 1909? Would the journal contain all the items, or would they be reduced to the totals, the same as that miscellaneous rent account?

A. The journal will show where all the said accounts as then carried were transferred as of December 31, 1908.

9011 Q. Referring to the West 42nd street station, and particularly the items set forth on page 2900 of the record, do you know what the particular apparatus is there, or would your answers be the same?

A. They would be the same as to the 21st street station.

Q. That you have given in reference to the 21st street station?

A. Yes, sir.

Q. We would have to refer then to some analysis of the fixed capital account as of December 31, 1908, to find out what that apparatus is?

9012 A. To find out what the cost of that apparatus was.

The Master: That would necessarily include what the apparatus was, wouldn't it?

The Witness: Well, he is asking several times to describe the apparatus.

The Master: But by referring to your fixed capital account, that would show not only the cost, but what the apparatus was, wouldn't it?

The Witness: It would probably be designated in the accounts as "discharging apparatus", West 42nd street station, and would probably give no details as to just what that apparatus was. 9013

Q. Well, did you help to gather up the inventory, so-called, that has been furnished by the complainant?

Mr. Ransom: I object to the question.

The Master: I will let him state that. Did you?

The Witness: I did not.

Q. Of your personal knowledge, you don't know that this apparatus has been used right along since that date in 1909, to date, by the Astoria Company? 9014

Mr. Ransom: I object to the question.

The Master: It has been answered as to the 21st street station, and the answers would be the same as to the 42nd street station, I understand.

The Witness: They would, sir.

The Master: And the same as to 111th street?

The Witness: They would, sir.

The Master: This witness is only in a sense, head of a book-keeping department.

Mr. O'Brien: We have got to have some one swear to these figures in the books, your Honor. Mr. Teele won't take the responsibility. He is only the accountant. He is the plumber, you know, but some one has got to come in here and swear to them. 9015

The Master: Next question.

Q. Mr. Brundage, will you state, you perhaps covered this before, but it will bring it in the record with all of this subject, referring to the 42nd

9016 street station again, what part of the property there is assumed to be rented to the Astoria Company.

Mr. Ransom: I object to the question. It has been covered fully.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is there any inspection made yearly to find out whether these lands are still being occupied by the Astoria Company?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Q. Or used?

9017 The Master: The witness has already testified that he does not know that. He said he has not made any and did not know anybody that had made any.

The Witness: I said there might probably be such, but I did not know of any.

The Master: You don't know of any that were made?

The Witness: No, I do not.

The Master: You didn't make any?

The Witness: No, sir, I did not.

The Master: And you have testified to that several times, haven't you, that you have not?

9018 The Witness: I have, yes, sir, several times.

Q. Are bills rendered each month for these items, or do they come in, or are the payments made monthly on bills?

A. Bills are rendered each month for one-twelfth of the annual rental.

Q. Could you take Exhibit 178 and give us a statement as to the other facilities that are rented on other properties of the complainant company?

Mr. Ransom: I object to the question as not within the scope of the cross-examination.

Exhibit 178 is only in relation to the land. 9019
Exhibit 178 does not undertake to show facilities.

Mr. O'Brien: I did not say that it did. I am giving him a diagram that might refresh his memory, as to locations, and ask the witness to state what these facilities are that are rented to other companies.

The Master: Could you point out on your diagram where those facilities are and what they are?

The Witness: Other than these I am talking about?

9020

The Master: Yes.

The Witness: No, your Honor, I cannot.

Q. Can you take any book that is in Court now in evidence, and state just what these facilities rented are?

A. Not without a very lengthy study. In order to analyze the account before you, Mr. O'Brien, it would be necessary to go through the Sundry Debtors' blotter for each month of the year and aggregate the amount of these charges and see what they were. It would be a very long job.

Q. Well, this amount that was found in the journal must have been gathered together somewhere? 9021

A. Take any one of these amounts, if you will, sir.

Q. Take the $30,089.50, entered on page 1153?

A. Yes.

Q. For January, 1918?

A. Yes, sir.

Q. Isn't that gathered together in some one of the books of the Company?

A. That consists of a summarization of all the charges made against various debtors for the use of various properties, and in order to get it to-

9022 gether, you have to go through the Sundry Debtors' blotter for the month of January.

The Master: Mr. O'Brien, I think I am going to insist upon this witness' cross-examination standing over until your experts are through analyzing these books. I believe that when you have your expert accountant go through these books, you will find it unnecessary, perhaps, to ask all these questions. I think I am going to use my discretion in refusing to permit any further cross-examination at this time.

9023 Mr. O'Brien: Will your Honor permit me to proceed with that question, let me finish up that before we take up a discussion about putting it over?

The Master: What was the question?

(The question was read by the stenographer.)

The Master: That particular question I am going to rule out upon the ground that it has already been covered; he has already pointed out and said that the journal refers to the sundry debtors.

Mr. Ransom: So far as these two accounts
9024 on folio 1153——

Mr. O'Brien: I don't want the statement before I get the answer of the witness.

The Master: You won't get the answer of the witness to this question. I rule it out.

Mr. Ransom: So far as these two accounts on folio 1153, these are the two accounts of which details are given in schedules 6 and 7 of this exhibit.

Mr. O'Brien: Well, we haven't got Mr. Teele on the stand here.

The Master: I am not interested in that. 9025
What I am interested in——

Mr. O'Brien: Will your Honor hear me a minute?

The Master: No, I won't.

Mr. Ransom: As soon as we finish this examination——

The Master: I have made up my mind I won't permit any cross-examination of these books.

Mr. O'Brien: Let me call attention to a statement of the witness. It is true I called his attention to the journal, and we went back 9026
from the operating ledger concerning this particular account to the journal, and there was no——

The Master: Didn't you hear me say that I did not want any discussion?

Mr. O'Brien: I heard you say that.

The Master: I mean what I say. I don't want any discussion on this subject. I have decided. Next question.

Mr. O'Brien: Well, your Honor——

The Master: Take your exception. This is not the way to try a case.

Mr. O'Brien: I note the exception, but your 9027
Honor is about to suspend the examination. That is the point.

The Master: I will not permit any further cross-examination of this witness at this time with reference to these books. I suspend his cross-examination until your experts have gone through them. If there are any other questions you want to ask him outside of these books and with reference to his charges made for these facilities, I will let you ask it.

9028 Mr. O'Brien: Well, there was another question I wanted to close up that particular inquiry there with, one or two questions.

The Master: I won't permit any questions. I mean just what I say. My judgment is that nothing is gained by it. I am not taking away your right to cross-examine, but I do not think——

Mr. O'Brien: I don't want to take tips from Mr. Carter or Mr. Ransom as to how I will conduct my case.

The Master: The next question.

9029 Mr. O'Brien: As I understand it, your Honor, you don't want any reference made in any way to the books?

The Master: I don't want a cross-examination as to these books, and as to where items will be found and as to how they are going to be traced and as to where the details are, because I believe that when your accountants get at these books they will find all that without wasting an hour or two of this witness's time and the Court's time.

Mr. O'Brien: The point I was trying to bring out, was not the errors in the books, so
9030 much as the fact, first that the witness is not qualified to say these books are correct. I want to show by the examination of that witness that these books ought never to have been, so far, admitted in evidence; secondly, I want to bring out the facts that will show to your Honor that in receiving the operating ledgers of the years prior to 1918, that a serious error was committed, in my judgment.

The Master: I think you have covered the particulars.

Mr. O'Brien: Without the supporting data, 9031
because you cannot get the information.

The Master: I think you have covered the subject. I won't permit any further argument.

Mr. O'Brien: Then I don't know what is left to me to go ahead with, your Honor.

The Master: I don't think there is anything.

Mr. O'Brien: If you are going to exclude an examination as to the books.

The Master: At this time, yes. I want you to send your experts up and analyze the books 9032
first, then if you find——

Mr. O'Brien: I submit that is not an obligation that is on us, your Honor.

The Master: Well then, don't do it.

Mr. O'Brien: We are entitled to have them prove their case before we spend money on accountants. Whatever may obtain in the actual practice, that is the law, and I respectfully submit that we are entitled to bring these facts out from the witness.

The Master: The Court has ruled, you have taken your exception. If there are no further 9033
questions of this witness, he will leave the stand.

Mr. Ransom: I have a question I would like to ask, your Honor.

Mr. O'Brien: There were a number of matters having a bearing on the books and on other matters. I don't know just whether to continue. I don't want to trespass on your time, you having made a ruling.

The Master: Ask any question you think has

9034 to do with matters other than testing the accuracy of the books, and I will rule on it.

The Master: You understand, Judge Ransom, that I am taking it on myself to suspend cross-examination; that the witness is still under cross-examination.

Mr. O'Brien: I had in mind going over the——

The Master: I have reached the conclusion, Mr. O'Brien, that I was right when I first made the suggestion, when this witness' direct-examination was finished; that the cross-examination better be suspended until some other time.

9035 I have come back to that same thought and will stay there. I am not going to spend any more time on it.

Mr. O'Brien: I, of course, do not want to have the matter deferred so long that it might be assumed that these books are correct accounts.

The Master: I am going to try to make myself clear on that point. I permitted counsel for the defendants to cross-examine the witness before I received the books——

Mr. O'Brien: That, of course, was before the

9036 books for 1918 were received.

The Master: But the same cross-examination relates to them. I have in mind, and I thought I had so expressed myself before, that no one witness will swear that those books are correct, except so far as Mr. Teele can go on and say that as an expert accountant, checking them up in the manner that he has, he believes them to be correct. This witness cannot swear they are correct, and no other one individual can swear they are correct; and I have that

clearly in mind, and it was so stated on the record when I received these books, that I received them as the ordinary regular books of account, kept in the regular course of business, carrying with them such presumptions as books kept in that form carry. There is not any sense in trying to demonstrate the proposition that this witness can swear they are correct, because he cannot swear they are correct except as he believes them to be correct, having been kept in the usual course of business. If you cross-examine him for the rest of the year he could not say that, and if he did I would not take his testimony as worth anything. If you called Mr. Carter, Mr. Jones or Mr. Smith and cross-examined him until the end of time you would not get any more. 9037 9038

Mr. O'Brien: There are other points in the cross-examination, your Honor, and I say this with due respect to your ruling, and that is, that the examination of the witness will bring out just the barriers that exist.

The Master: For instance?

Mr. O'Brien: To a complete examination being made within a reasonable time.

The Master: For instance? 9039

Mr. O'Brien: Take that item I was talking about.

The Master: Yes.

Mr. O'Brien: I asked the witness a very simple question, to find out the sources of information as to a particular $30,087.

The Master: And he told you where you could find out.

Mr. O'Brien: He said it was in the sundry debtors, and we go through the sundry debtors

9040 into the journal. From his answers I gathered that it would be found in the journal spread out. We find that was not correct, and later, after some examination is followed, we come back to the subject, and I asked the witness to give me the items that make it up, so we could put in our record here everything that covers rentals from facilities. The witness said it would take him too long a time, that he would have to go all the way through and add up so and so and such amounts; and I was about to when your Honor objected to the course I was
9041 pursuing and ruled that the cross-examination ought to go over—I was about to hand in the sundry debtors book and ask him to give me the pages on which they are, assuming they would be all drawn together and the total of $30,087 given.

The Master: The Master will adhere to his ruling. Next question.

Mr. O'Brien: If it is not in that book and you still have to go to some other record there may be another reason why those books ought to be ruled out.

The Master: We will see a little later. Go
9042 on with the examination.

Mr. O'Brien: I at this time, in view of the position taken by the Court as to the witness' not knowing that the books are correct, and only believing that they are, move that the testimony of the witness on the subject of these books of account be stricken from the record.

The Master: Motion denied.

Mr. O'Brien: Exception.

9043

By Mr. O'Brien:

Q. Mr. Brundage, you said that you had an audit made annually of these books?

A. I did.

Q. Are those audits preserved?

A. The report of the auditors is preserved; yes, sir.

Q. You have them in your files?

A. They are in the secretary's files; yes, sir.

Q. And you know that they are still extant?

A. I believe so.

Q. Were they turned over to Mr. Teele for his examination?

9044

A. Not so far as I know.

Q. Is Mr. Reynoods, the accountant—was his name Reynolds?

The Master: No, McCulloh. Churchill McCulloh, and then Mr. Reynolds.

Q. Is Mr. McCulloh still living?

The Master: He said he was.

A. Yes, he is.

Q. Did I understand you to state in your early testimony in this case that the books of account which were offered in evidence and finally received for the year 1918 were all the books of account of the company?

9045

Mr. Ransom: I object to the question. It has been already amply covered.

The Master: This may lead to another question. I so understood it—all the general books of account. Are they?

The Witness: I so stated, yes, sir. All the general books of account are here in evidence.

Q. Is there a general ledger kept by the company?

9046 A. Yes.

Q. Not included in the books offered in evidence?

A. Right.

Q. Will you state why that was not produced?

A. Yes. That is already in the evidence, Counsellor.

By the Master:

Q. Tell him the reason?

A. The general ledger as we keep it is simply a summarization of this ledger and everything that is in the general ledger is in this ledger. It provides an expeditious means of preparing a con-
9047 densed balance sheet.

Q. Your general ledger totals up the capital account, does it not?

A. Yes.

Q. It shows the total of the profit and loss, does it not?

A. Yes.

Q. And are those items shown in the operating ledger?

A. So it says, yes, sir. Our general ledger is practically a statement book, your Honor.

Q. There is nothing in the general ledger that is not in here?

9048 A. Nothing whatever.

Q. And the totals are in here?

A. Yes, sir, everything is in there the same as in the general ledger.

Q. So if we understand each other, does this operating ledger show what the total invested capital is, according to your books to-day?

A. Yes, sir.

Q. What is that?

A. I could not answer that question without looking at the book.

Q. By looking at this book you could? 9049

A. Yes, I could summarize it in there.

Q. What do you mean by that?

A. Take different accounts and put it together.

Q. Does this show what the amount of profit and loss is?

A. Yes, up to December 31, 1918, it is in one account.

Q. Just tell me that amount. I want to see what it is.

A. On folio 1172 of Section A of the operating ledger, 1918, is kept the account entitled "General Profit and Loss." 9050

Q. Well, is there another profit and loss account?

A. No. (Continuing) And as of December 31, 1918, that account showed a balance of $18,689,128.53.

Q. What was it at the beginning of the year?

A. $19,890,439.23.

Q. And that is from operations of all kinds?

A. That is the surplus of the company at the beginning and the end of the year I have read to you, your Honor.

Q. What I mean is this: That is the result from all sources of every kind?

A. Yes, sir, cumulatively. 9051

Q. So that there was a reduction in the Surplus Account of some——

A. Of $1,200,000.

Q. For the year?

A. Yes, sir.

Q. That would show a loss during the year of that amount?

A. Yes; it does.

Q. That same amount will appear in the general ledger?

A. Surely.

9052 Mr. O'Brien: These are not going into the evidence, are they?

The Master: Not as proof of the fact, no. That account as it is kept, without regard to explanations, would indicate that they had lost $1,200,000 during the year in some form and in some way. It may have been by bad real estate, it may have been extra dividends.

Mr. O'Brien: Or extra buildings or new investments?

The Master: Yes, it might be a number of different things. I wanted to test the situation
9053 as to whether we ought to have the general ledger here. It might be a dozen different things.

Mr. O'Brien: Don't you think we ought to have the ledger here?

The Master: Why, I will not require the ledger to be brought here from the simple statement in this book.

Mr. O'Brien: We could tell more about it when it is here.

Mr. Ransom: We are perfectly willing to produce it. The reason we did not produce it is that we were perfectly clear under the au-
9054 thorities that that was a book not admissible.

The Master: You produced the book here, offer it in evidence, and if there is no objection I will receive it. If there is objection, I will exclude it.

Mr. Ransom: I will do that.

Mr. O'Brien: I am speaking about the books, reserving my objections to them.

Mr. Ransom: Either you want it or do not want it.

Mr. O'Brien: Do not be putting restrictions 9055
on what we want and do not want.

The Master: Talk to me, Mr. O'Brien. When Judge Ransom produces that ledger and offers it, you can make every objection to it that you made to the other books of account, with the one exception, that you do not make any particular point about this general ledger not being one of the books kept daily, but being a summarization of it, and in some other form protecting yourself. If you want the general ledger in, I will put it in.

Mr. Ransom: It is not a book of original 9056
entry, and we did not offer it for that reason.

The Master: The next question.

By Mr. O'Brien:

Q. Did you talk with counsel about bringing that book down?

A. The general ledger?

Q. Yes.

A. No, sir; I did not.

Q. Did you get any instructions from anybody not to bring it?

A. No, sir.

Mr. Ransom: I object to the question.

The Master: Did you bring what you were 9057
directed to?

The Witness: I did; exactly so.

The Master: It is quite clear to me, Mr. O'Brien, that Judge Ransom and his associates did not believe they had a right to offer the general ledger, and therefore, did not produce it. Now I have directed Judge Ransom to produce that ledger before me to-morrow, when I sit at the Gas Company's office.

Mr. Ransom: May I say this: When the

9058 other 1918 books were offered, that book was in Court, but inasmuch as it did not come within the scope of your Honor's ruling, as we understood it, we did not offer it.

The Master: I should have rejected it upon that ground, but I shall direct you to produce it before me to-morrow morning, while at the Gas Company's office, and it will be disposed of then.

Mr. Ransom: It will be produced and offered at that time.

Mr. O'Brien: I think, your Honor, the line
9059 of questioning I might indulge in would rather infringe upon your ruling.

The Master: I think so.

Mr. O'Brien: If I were to ask the witness any question—it is pretty hard to ask him any question that will not go back to records.

The Master: Mr. O'Brien, if I thought I would foreclose you from cross-examination, I should not be inclined to make the ruling I did, but I am not; I am postponing it, that is all. I think you can safely rest under my instructions to suspend at this time.

Mr. O'Brien: I appreciate that where you
9060 go roaming through a great deal of voluminous books like these, some leads will result in profit to the record, as we see it, and others might look to the onlooker futile. But the point is this, your Honor, that I want to take advantage of the witness we have. There is nobody to tell us what other witnesses are coming. If Judge Ransom had outlined what his proof was, there might be some time saved, but we do not know that. We are dealing with it

to-day. To-day is the day with us, and so with 9061
the witnesses on the stand.

The Master: In trying a case as I am trying this, you have a tremendous advantage over lawyers in the ordinary litigation, when you have got to jump up quick and cross-examine. Any time I have an opportunity of studying a situation, analyzing the books, analyzing the figures, getting my expert's views on it, I welcome that kind of an opportunity, because I think counsel can do a great deal better after their experts have looked into a situation. Take Mr. Teele's testimony, I think you gentle- 9062
men would be very foolish, indeed, to proceed to his cross-examination as soon as the direct is through, until your experts have analyzed his figures and tables—unless you have already done it.

Let us suspend with this witness.

Mr. Ransom: I want to ask one or two questions.

Mr. Clark: I have a question or two.

The Master: Go on, Mr. Clark.

By Mr. Clark:

Q. Mr. Brundage, about the rental of this appa- 9063
ratus to the Astoria Company, are there records in your department which would show what use was made of the different discharging apparatus at those three plants for the year 1918?

A. No, I have testified as to what they were used for at the time the arrangement started, and which I believe they are still used for to-day.

Q. There are no records showing the number of loads, the number of tons of coke that are discharged by the different apparatus for the year 1918?

9064 A. No, not for 1918.

Q. Nor is there any record showing the use of the land?

A. No, sir, not during that year.

Q. Or for any year since 1909?

A. No, sir.

Mr. Clark: I renew the motion to strike out the testimony of the witness as regards the use of these properties.

The Master: The motion is denied. His testimony simply amounts to this, that back in 1909, we conceived a basis on which we
9065 would make some charges; we have since made those charges in that way. It does not prove at all that the charges are adequate, reasonable or proper, and I am taking this proof only to the point and to the extent that charges are made and revenue received, and that is all. I cannot make it any clearer.

Mr. Clark: I understand that, your Honor, but even so, if the testimony is taken and the charges are made, it seems to me the proper basis should be laid for those charges.

The Master: I think so too.

Mr. Clark: Before the evidence is taken.

9066 The Master: No, I think the complainant company ought to prove the reasonableness and adequacy of those charges by the use actually made from year to year, and the extent of that use, but up to this time they have not offered that, and I am receiving this as far as it goes. Anything else?

Mr. Clark: Yes, just one question.

Q. Mr. Brundage, these annual orders that were made, were you familiar with how they were conducted?

A. Yes, sir. 9067

Q. How the orders were conducted?

A. Yes, sir.

Q. Did they go back to the original data—the accounts go back to the original data?

A. They picked sometimes two, sometimes three, occasionally as many as four months out of the year, and made us produce all of the original supporting data, and followed the original sundry creditors' bills and the various reports from the original record, through the journals and operating ledgers, up to the final balance sheet, checked everything in respect of those two or three or four months, 9068 whatever the case might be, verified all the postings of the ledgers, verified all the footings, checked everything that was checkable from a mathematical standpoint, and also the reasonableness of the charges made.

Q. Speaking of the original data, you mean the data at the plants, for instance?

A. No, I mean in respect of all these thousands of sundry creditors' vouchers, they checked the receipt voucher attached to each bill, in verification of the fact that the goods had been received. They verified that the bills had been properly 9069 audited, that the proper signatures as to the receipt of the material were there, that the purchasing agent's approval was on there, and that the bill had been correctly computed; also that it had been checked against the purchasing agent's order. They went through the same routine with respect to the two or three or four months that we go through on every bill.

Mr. O'Brien: Your Honor, I move to have the answer stricken out. The witness had

9070 drawn conclusions here that they verified them and found that everything had been correctly put down.

The Master: Mr. O'Brien, I shall deny your motion with the statement I have made before, that when a witness like Mr. Brundage makes a statement of that kind, I assume he believes that they found them all correct.

Mr. Ransom: His expert judgment.

The Master: He of course cannot testify to what other people did that he didn't do himself. I will let the answer stand with the state-
9071 ment I have made that I take it with reservation.

Q. Did they go into the question of salaries, the reasonableness of salaries paid to different officers and employees?

A. I should believe not, Major; if they did I don't know of it.

Q. Your testimony that they went into the reasonableness of the items appearing in the expense vouchers does not apply to the reasonableness of salaries?

A. I should say not.

Q. What did they do in relation to the items of
9072 labor at the plants? How far did they go back on those?

A. They went back to the original pay roll in respect of those years up to the time that we changed our pay roll system; and from the time we changed our pay roll system they went back to the weekly individual time cards to which I have heretofore referred.

Q. Went back to all of those?

A. Yes, sir. 9073

The Master: No, he didn't say to all of them; he said they tested them for three or four months.

Q. For the two or three or four months they took all of them?

A. Yes.

Q. Did they go back of those in any particular?

A. I believe not.

By the Master:

Q. They rather did what Mr. Teele testified originally he did.

A. Yes, sir. 9074

Q. He didn't go back to the original time books, and he did not go back to the original receipt of merchandise slips at the works, and things of that sort. They took the certified return from the works, as Mr. Teele did?

A. Yes, sir.

Q. They didn't go to the station and check up the receipts?

A. No, sir, they accepted the statements of the superintendent.

By Mr. Clark:

Q. In the cases of monthly reports, they did not go behind the monthly reports in any case? 9075

A. No, I could not say that, Major. I recall that on several occasions, quite a number of occasions, they made it a point to go to the recapitulation sheets of sales in the branch offices and confirm the accuracy of the statements sent to the general office on which the entries are based.

The Master: I don't think this is proper cross-examination. One of the defendants' counsel brought out whether they had the books audited.

9076 Mr. Clark: He based his statement that the books were accurate on the audit of these people.

The Master: No, that was brought out either by Mr. Chambers or Mr. O'Brien.

Mr. Clark: That was his statement at one part of the record here, that on the faith of that certificate he considered these books accurate.

The Master: I suppose that does bear on your attitude somewhat as to the accuracy of this audit.

9077 The Witness: It is one of the steps we took to satisfy our minds that the books are correct.

The Master: I will let you go ahead.

Q. How long a period did they take in any of the commercial offices to check up the accuracy of the sales?

A. I cannot answer that question.

Q. Do you know that they did go to some of the commercial offices?

A. I do.

Q. But to what extent you don't know?

A. I don't know just how long they took nor how far they went into the matter except their report
9078 to me that they had done so, in their certificate.

Q. What did you mean when you stated that they looked into the reasonableness of the charges that appeared in the sundry vouchers?

A. Did I say reasonableness of charges? I should have said reasonableness of entries. If I did not say so, I intended to. They went over all these monthly reports received from different places, and satisfied their minds that the entries based upon these reports were reasonable entries to be made in books of account.

By the Master: 9079

Q. How about charges for merchandise, did they test the reasonableness of those?

A. Merchandise come through sundry debtors vouchers, and I don't know how far they went into that. I believe they accepted the statement of the superintendent that the goods were received.

Q. And that the prices were reasonable.

A. Then they looked at the price for the purchasing agent's O. K., and the routine of the company that the bill be checked against the purchasing agent's order.

Q. In other words, you believe they assumed that 9080
the purchasing agent would only order at a reasonable price?

A. I say they probably did that.

By Mr. Clark:

Q. They did not go outside of the company to ascertain the reasonableness of prices?

A. If they did I don't know of it.

Q. Then their audit would only prove the accuracy of the account so far as the transcription of those accounts are concerned? It does not prove the reasonableness of the purchase price of any article, so far as you know?

Mr. Ransom: I object to the question. 9081

The Master: I will let him answer.

A. I am rather in doubt, Major, as to how to answer your question. It does not seem to me that an audited account that way would be assumed to be the very last word as to the reasonableness of prices paid.

The Master: It is rather more accurate to say that it is an examination of the books to see that all entries made in there of moneys paid out, etc., are based on the certification of the

9082 officers charged with the disbursement of those moneys.

The Witness: That would be a fair statement, I should say.

Q. How long did it take them to make this audit?

A. Never less than two and a half months, and sometimes as much as four months, depending on the number of men they could spare to do the work.

Q. How many men did they use to do it in two and a half months?

The Master: We have been over all that.

Mr. Clark: Not in regard to this audit, I think. I have been over the record pretty care-
9083 fully.

The Master: Read it again. My recollection is perfectly clear about it.

Mr. Clark: I just went over this yesterday, and I am pretty sure.

The Master: Go back to his original testimony. Well, let us have it again, it cannot do any harm. How many men did they have?

The Witness: I should say they would average four to six men.

Q. Four to six men?

A. Yes.

9084 Q. Their audit would not, to your mind, certify to the accuracy of any of the superintendents' reports as to the number of men employed, or the amount of oil used, or the amount of coal used, or any of the items included in the monthly reports of the different stations?

Mr. Ransom: I object to the question.

The Master: I will let Mr. Brundage say no.

Mr. Ransom: He may not say no.

The Master: If he says anything else I will cross-examine him.

A. I believe, Major, that they accepted the state- 9085
ment of the superintendents as to what they had done during the month in respect of materials received and used.

Q. Your answer is now?

A. Yes. Let us get it correct, just what we mean. They accepted the statements of the superintendents as to what they had done.

The Master: And did not go behind that?

The Witness: And did not go behind that, as far as I know.

Mr. Clark: That is all.

REDIRECT-EXAMINATION BY MR. RANSOM: 9086

Q. Mr. Brundage, have you now computed the total value which you took for land and for apparatus rented to the Astoria Company at these stations, and likewise the totals for mains in the Bronx?

Mr. Chambers: I object to that as already covered.

Mr. Ransom: Mr. Chambers asked for certain of the figures, and I asked Mr. Brundage to give the total, and he did not at that time have it.

A. In my computation as to Astoria, I computed the land at $212,350.

The Master: That is based on this expert's 9087
testimony?

The Witness: Mr. Wheelock's testimony.

Q. The total as to apparatus is what?

A. $46,784.09.

Q. Making a total for the land and apparatus of what?

A. $259,134.09.

Q. With respect to the mains, what was the total value taken?

9088 A. $42,756.61.

The Master: And Judge Ransom asked you what the total was. As I understood it, that was the total amount you said that it cost?

The Witness: That is the total cost.

Mr. Ransom: I asked him the value which he took.

The Master: The amount that he took as value?

Mr. Ransom: Yes.

The Master: And the amount that he took was really the amount that he said it cost.

9089 Q. Was the company's investment?

The Master: Yes.

Q. Now, at the time you took Mr. Wheelock's valuation for the land assigned to the Astoria Company at the several stations, did you also have before you the Court's findings as to the values of the same properties?

A. I did.

Q. Can you tell how those figures compared with those which you did take as Mr. Wheelock's?

Mr. Chambers: I object to that.

The Master: Objection sustained.

Mr. Ransom: They endeavored to show that

9090 there was some wide margin of variance between Wheelock's figures and the Court's figures?

The Master: I don't care about it. In my judgment, there was no court findings that survived the decision of the United States Supreme Court.

Mr. Ransom: There certainly was a Master's finding before him.

The Master: I said there was in my judgment no finding which survived the United

States Supreme Court. Now, I have intimated 9091
to counsel for complainant before, if I have not made myself entirely clear I will do it again, that in my view of the situation the findings of Mr. Masten, the Special Master in the 80-cent gas case, are not to be taken by me as the basis of value here, because his judgment was reversed by the United States Supreme Court in language which leads me to believe that the Supreme Court had its doubt as to the figures themselves.

Mr. Ransom: We, of course, were aware of your Honor's ruling in that respect, but with 9092
all due deference to that and to your Honor's views which, if you continue of that opinion, will probably be the basis of your decision in this case, we may desire to make our record with a view to the contention which we would make in that respect.

The Master: The objection to this line of questioning is sustained. Let us have the next question.

Q. Was there any substantial margin of difference, Mr. Brundage, between the Wheelock figures which you did take and the Master's figures which Mr. Chambers made much of your rejecting? 9093

Mr. Chambers: I object to that.

Mr. O'Brien: Same objection.

The Master: Same ruling and exception.

Mr. Ransom: Exception.

Q. Was there a margin of more than one per cent of difference between the Court's figures referred to by Mr. Chambers and the figures that you took?

Mr. Chambers: To that I object, your Honor.

The Master: Same ruling.

Mr. Ransom: Exception. I submit that this

9094 is clearly within the scope of redirect-examination, in view of the nature of Mr. Chambers' cross-examination.

The Master: I am not questioning whether it is proper redirect. I am not interested, because the Court is not interested in a comparison of Wheelock's figures with the Master's figures in the 80-cent case.

Mr. Ransom: In your view, that would be correct were it not for the fact that Mr. Chambers attacked the witness' computation.

The Master: It does not make any difference,
9095 Judge Ransom, because in order to get a finding from me in this case, you have got to prove the matter now.

Mr. Ransom: I understand that.

The Master: This witness is simply testifying to computations made on the basis of Mr. Wheelock's figures, not somebody else's figures, but Wheelock's figures. That is so far as the basis of his figures. I am not interested in what the City's figures were, or what the Master's figures were. They do not help us in the tabulation made by this witness, which is based upon Wheelock's figures.

9096 Mr. Ransom: That would be true, were it not that Mr. Chambers made his attack upon the witness' computation on the theory that the witness ought to take into consideration the Court's figures instead of Wheelock's figures.

The Master: I haven't paid any attention to Mr. Chambers' view about it, either, so you need not worry about Mr. Chambers' attack.

Q. Mr. Brundage, did the charge to the Astoria Company and to the Central Union Company for the use of facilities include as an element a return

to the Consolidated of at least six per cent upon 9097
the value taken by you?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. O'Brien: And I make a further objection——

The Master: Wait until I hear this question.

Mr. O'Brien: I thought you were going to rule.

The Master: Read the question.

(The question was read by the stenographer.)

Mr. Ransom: I asked if that was one of the elements which he took into account. 9098

Mr. Chambers: I want to say, your Honor, that we intended later on to take up this subject as part of Brundage's testimony, and I think it ought to go until after the cross-examination.

The Master: I don't think it hurts you any, it simply gives you another element, a further basis of cross-examination, I think, and I will let the witness testify to that. I will let him ask it, and you gentlemen may find it useful when you come to cross-examination.

Q. Did you or did you not?

A. I did. 9099

Mr. O'Brien: Six per cent on what?

Mr. Ransom: On the value taken by him. That is on the value taken by him for the land and apparatus.

Mr. O'Brien: I move to strike it out, your Honor.

The Master: I know you do. Motion denied. I won't strike any of this testimony out. I may disregard it when I come to it.

Mr. Ransom: This is offered to show the

9100 basis of the computation on which the charge has been made, and the charge has been computed.

The Master: As I said before, Mr. O'Brien, I am going to permit Judge Ransom to put in every item of proof, so far as I think can have any possible bearing on his theory of the case. I won't strike any of it out, because I want the Court reviewing my decision to have it, but when I reach a conclusion, I may specifically say that I have disregarded many of these items that Mr. Ransom has proved. The next question.

9101 Mr. O'Brien: They really set up their own theory of the value of improvements, and we have got to make our objection to preserve our rights.

The Master: That is all right. You have made your objection to preserve your rights.

Mr. Ransom: The Master is not of necessity bound by the basis of charge.

The Master: Mr. O'Brien is going to take his seat unless you ask the next question, Mr. Ransom.

Q. Mr. Brundage, when a gas appliance rented
9102 by the Consolidated Company to a consumer is scrapped, or withdrawn, so as not to be put in use again, is the cost of that appliance written off from any property account?

A. It is.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and not direct.

Mr. Ransom: It is absolutely direct, in view of the cross-examination.

The Master: The objection is overruled, and 9103
the witness's answer is that it is.

Mr. Chambers: Exception.

Q. Just describe what is done in that respect, what account.

A. The invoice cost of the appliance is credited to the account found in our books known as "Gas Appliances Rented".

Mr. Ransom: That is all of the redirect for the time being.

RECROSS-EXAMINATION BY MR. CHAMBERS:

Mr. O'Brien: It did not include anything but invoice costs when you laid this at rest? 9104

The Witness: We credit the gas appliances rented for the invoice cost of the appliance that has gone out of service.

Mr. O'Brien: Nothing further, there is no other credit there to include the labor and the advertising and the telephone bill and all the other incidentals?

The Witness: No, counselor, because those items, when they were first incurred, were charged to operating expenses, not to capital account.

Q. Was it you that determined that six per cent on these amounts and this other property, was the 9105
fair return to be taken on it?

A. I testified, Counselor Chambers, that I made the computations for the Astoria arrangement, but that the mains in the Bronx were computed by Mr. Simpson.

The Master: What Mr. Chambers wants to know is who determined that six per cent basis of return.

The Witness: In the case of Astoria, with which I am familiar, I had in mind that we must get a return of at least six per cent.

9106 Q. Well, you determined then that that was a sufficient return on that?

A. Yes. I did not say a sufficient return. I said we must get at least that much.

Q. Well, you figure that amount as a fair return?

A. I fixed a charge which included a lot of other things, and among the factors I said we must get at least six per cent.

Q. You did not mean to charge them an unfair amount, did you?

A. No, sir.

9107 Q. So this is fair then? You did not mean to do something unfair to the Consolidated Company, did you?

A. I tried to make an arrangement that was fair to both parties.

Q. And the fair charge was six per cent?

A. And included in the charge there must be at least six per cent.

Q. So, you fixed it at six per cent?

A. No, I did not fix it at six per cent.

The Master: Didn't you?

The Witness: No, I thought we should have at least six per cent.

9108 Q. You mean who; the Consolidated?

A. The Consolidated ought to have that.

Q. The Consolidated ought to have at least six per cent?

A. Yes.

Q. And the Astoria ought to pay at least six per cent?

A. Yes.

Q. And the Central Union ought to pay six per cent?

A. They ought to pay at least six per cent, yes.

Q. That was back in 1900, so far as the Central Union was concerned? 9109

A. Yes, I think about 1900 that was started.

Q. That six per cent has been approved by the Company, apparently, because no objection has been made to it—approved by both companies?

A. Both companies.

Q. All three companies?

A. All three companies. The arrangement has been satisfactory for these years, yes, sir.

The Master: Cross-examination suspended until counsel are ready to proceed with you further, Mr. Brundage.

9110

Mr. Ransom: I think we ought to have some understanding or indication as to when this witness is to be produced for further examination.

The Master: I shall take that up later on, but for the time being I suspend the cross-examination until counsel have had a chance to analyze these books through their experts.

Mr. Ransom: Is the burden left on us to produce the witness?

The Master: Yes.

Mr. Ransom: Well, can we determine when we will produce him? 9111

The Master: No. You may bring the matter up when you think their experts have sufficiently covered the ground, so that they ought to be familiar enough with the situation to proceed.

Mr. Ransom: That time is now.

The Master: I will rule that it is not now.

Mr. Ransom: But your Honor does not know the facts as well as I do.

9112 The Master: Well, I will find out the facts a little later. This cross-examination is suspended for the time being.

ARTHUR W. TEELE, recalled upon behalf of the complainant.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Regarding Schedule 5, I think you said that represented interest on bank balances and also interest on final bills to consumers?

A. Yes.

Q. Are the funds on which the entries shown in
9113 that schedule are made, limited to the funds derived from or used for the gas business?

A. They are not.

Q. That is, this includes, this statement or schedule includes the interest on every bank balance, no matter what its source?

A. It does, where interest is allowed.

Q. You have shown on this schedule the amount earned by the company during 1918 as interest on bank balances and final bills to consumers?

Mr. Chambers: I object to that on the ground that the question is misleading, in that this does not show what the company earned.
9114 This merely shows what he found on the books.

Mr. Ransom: It shows what the company received.

Mr. Chambers: Does this show what the company earned from all these sources?

The Master: Suppose you change your question so as to show what you received.

Q. This schedule, or the data on this schedule, was checked back to the bank book, was it not, as you have already testified?

A. It includes the amounts credited by the banks

upon the several accounts kept with them by the 9115
Consolidated Gas Company.

Q. And was checked back to the bank books?

A. Checked back to the bank account currents.

The Master: You don't say it is confined solely to that? When you used the word "include", you used that before, Mr. Teele, the word "include", and it leaves a little doubt.

The Witness: It is the amount credited by the bank and shown by the respective accounts current.

Q. Take Schedule 8, entitled "Commissions on other Gas, 1918". Will you describe what this 9116
schedule sets forth and how it is made up?

The Master: What case?

Mr. Ransom: That is Schedule 8.

The Witness: It is a charge made by the Consolidated Gas Company against the Standard Gas Light Company upon the net amount of gas sold to the Standard Gas Light Company for 1918, and as shown by the copy of the bill rendered to the Standard Gas Light Company on blotter 49, folio 373, in December, 1918.

The Master: What does this mean, that the Consolidated sells to the Standard at the rate 9117
of 32½ cents?

The Witness: No, it does not mean that. This schedule shows a copy of the charge that was made at that time, as shown on blotter 49.

The Master: This shows 27,000,000 cubic feet at 13½ cents per thousand?

The Witness: Yes.

The Master: Isn't that the basis?

The Witness: 27,000,000 cubic feet of gas

9118 is the difference between the gas purchased from the Standard Gas Light Company and the cubic feet of gas sold to the Standard Gas Light Company, and the amount of 32½ cents appears upon the bills.

Mr. Ransom: We will come to that value in connection with another schedule.

The Master: All right.

Q. Is this an amount which appears in the company's books?

A. It does.

Q. Where?

9119 A. On ledger B, folio 702.

Q. And is it credited to operating revenues in pursuance of any requirement of the uniform system of accounts?

A. It conforms to the instructions under account 439 of the uniform system of accounts.

The Master: This copy I have before me of Schedule A simply refers to ledger folio 702. Is there a page 702 in the ledger folio A, or are there two ledgers?

The Witness: There are two ledgers, and I am still in ledger B, so there may be an open figure.

9120 The Master: Why was this put on there?

The Witness: It should have been.

Q. Is there a page 702 in each ledger A and ledger B?

A. Yes.

Mr. Ransom: My impression is to the contrary.

The Master: Operating ledgers?

The Witness: Operating ledgers.

Mr. Ransom: I think the pages are continuous in the books, if I am not mistaken.

The Master: Go ahead.

Q. Turning to the expense side of this schedule, 9121
cost of production 1918.

A. Schedule 9?

Q. Yes. Will you describe what is comprehended on this schedule; how it is made up and the sources of the data contained in this schedule?

A. This schedule is taken from the operating ledger. The folios shown at the lefthand side of the sheet indicate the ledger folios from which the amounts are taken; the totals of the account are shown set in short, and the amounts are shown in either the first, second or third column, the various columns being used merely to accumulate totals. 9122

Q. What is indicated by the figures in parenthesis 601 A and 601 B, and the like, following each of the items?

A. The corresponding P. S. C. account numbers.

Q. These being classified according to the definitions contained in the uniform system of accounts of these respective account numbers?

A. They are.

Q. What does the schedule show, "Labor, Material and Expense" in connection with the production of gas?

A. The respective ledger accounts from which these amounts are taken, show the labor, material 9123
and expenses incurred by the company during 1918 for the various purposes as indicated by the title of the accounts.

Q. And the entries on this schedule are all taken from the ledger folios, as indicated?

A. They are.

Q. And have the entries in the ledger folios been checked and verified by you in the manner heretofore described by you?

A. They have been.

9124 Q. For example, with respect to the entries for labor at the several stations, have you checked the pay rolls and reports with regard to the payments made on account of labor in the manner in which you have hitherto described?

A. I have.

Q. And with respect to materials used, what check did you make? Did you check the materials shown as used at the stations as against the monthly station report made by the superintendent of the station?

A. I did.

9125 Q. What else did you do?

A. The materials purchased have been traced back to the original purchase vouchers.

Q. To the original invoices?

A. To the original invoices, which bear the receipt of the man authorized to receive the material for the company, and in addition to that I have computed the total quantities of oil and coke used at the several stations, by taking the inventory shown on the respective reports at the first of January, 1918, and listing from the original purchase invoices all the quantities of oil and coal purchased and setting up against those the inventory left on hand
9126 as reported by the various superintendents at December 31, 1918, and arriving at the total quantity of oil and coal to be accounted for by the company.

Q. Then in the case of material purchased for gas making use, you examined all the original invoices?

A. I examined all the original invoices and listed them separately.

Q. And listed the quantities as shown on the invoices?

A. And listed the quantities as shown on the 9127
invoices.

Q. And listed the prices as shown by the invoices?

A. Listed the amounts.

Q. Yes, and the amounts. And in that way you made a calculation as to the total cost of material used during the year?

A. As to the total cost of oil and coal.

Q. Now, in the course of your audit of the complainant's book, did you observe instances in which employees of the Consolidated who had been paid by the Consolidated Company for their entire time, had performed part of their services only for 9128
the benefit of the Consolidated Company? That is where work had been done for other companies?

A. Yes. The distribution of all payrolls and charges to other companies, and the time recorded by any employee as having been used for other companies than the Consolidated Company.

Q. Was any time spent by employees that you so found eliminated from the statement of operating expenses of the Consolidated?

A. The time so reported is not included in any operating account of the Consolidated Gas Company, but is charged against the account of the 9129
company which is the debtor of the Consolidated Company.

Q. So that in your opinion, all work done for other companies has, in this statement, been charged to the other companies?

Mr. O'Brien: Your Honor, that is leading, and I object to it on that ground.

Mr. Chambers: It calls for his opinion.

Mr. O'Brien: I object on the further ground that the question assumes that the witness

9130 here has examined the underlying data, and he does not represent that he did. He has taken these general books of account as I understand it, as they stand.

Mr. Ransom: Oh, no, that is not at all so. He had gone back in a way very elaborately.

Mr. Chambers: And it calls for an opinion on a question of fact.

A. He is entitled to express an opinion as to what he has done.

The Master: Not as to this tabulation.

Mr. Ransom: As to the items whether he
9131 has eliminated, in his opinion, and whether the books of the company eliminate, in his opinion, all the record instances.

Mr. O'Brien: That assumes he knows all about it, and the witness is taking the figures as they hand them to him.

The Master: I sustain the objection.

Q. Is there any segregation made of payments to employees of the Consolidated Company for services to the Consolidated and services to other companies?

A. The time of employees and the purpose for
9132 which such time is used as reported by the superintendent under whose charge the work is done, is shown upon the weekly time card, the weekly time cards from which the payrolls are compiled, and from which the distribution of labor is made.

By Mr. O'Brien:

Q. You are not talking about salaried men like Mr. Alrich?

Mr. Ransom: Don't interrupt, please. We will let you cross-examine, as you always do, at great length.

Mr. O'Brien: All we want is the truth. 9133

Mr. Ransom: If you would keep still you would get it.

The Master: If Mr. Ransom would not enter into discussion with Mr. O'Brien, and if Mr. O'Brien would take his seat we would not get into an argument.

Mr. O'Brien: Sometimes a little word will save a lot of cross-examination.

The Master: It starts an argument between you and Judge Ransom.

A. (Continued) And show charges against other companies, and where those time cards show such 9134
charges against other companies, they are charged in the books of the Consolidated Company.

Q. That is, a record is kept in the case of employees whose time is not being given exclusively to Consolidated work, a record is kept of the division of their time?

A. Yes.

Q. And that appears on the weekly pay roll?

A. Yes.

Q. Reported to the pay roll department in the central office?

A. Yes.

Q. And corresponding and proper charges are 9135
there made to the cost of labor of the Consolidated, and charges to the account of any other company for which work was done?

A. Yes, that is true with regard to all labor that is reported upon weekly time cards.

Q. What would you say as to another situation as to work so done?

A. In the case of labor employed by the Consolidated Gas Company where weekly time cards are not kept, the record shown by the distribution of

9136 labor coming from the defendant and reported by the superintendent of that department will show charges to be made against other companies; and in the case of the engineering department there has been a distribution of certain of the labor costs in the engineering department based upon the ratio of construction expenditure existing between the different companies for whom the engineering department were doing service.

A. Of course this engineering is not part of the cost of this production that we are now considering?

9137 A. No part of the cost of production.

Q. What you have testified to with respect to labor appearing on time reports is in the category referred to here?

A. Labor in the manufacturing plant is all reported upon weekly time cards with the exception of the superintendents.

Q. On page 11 of this Exhibit 205 for Identification——

Mr. O'Brien: Pardon me a minute, I would like to ask right there——

Mr. Ransom: I object to the interruption of counsel.

9138 The Master: I think you had better wait.

Mr. O'Brien: There is an obvious error he made. I want to ask him a simple question.

The Master: You had better wait with it.

Mr. O'Brien: All right. You will wonder why the cross-examination is so long. Sometimes a question will save a lot of cross-examination.

Q. On page 11 of schedule 9 there is an item stated to be taken from ledger folio 595 entitled, "Cost of production, undistributed adjustment",

and referring to an annexed schedule 9-A, on page 9139
19, a detailed statement of this item, "Cost of production, undistributed adjustment". Will you state just what is comprehended in this item, undistributed adjustment, cost of production, as shown in this schedule 9-A. From what source did you get it?

A. It is set out on page 19 of this schedule, and the items credited are found on ledger folio 595 of the operating ledger, and there are charges made to the United States Government in connection with the operation of the light oil recovery plant, which are credits to the expenses included in the 9140
cost of production as shown by schedule 9.

Q. The amounts appearing there have been charged to the United States Government you found?

A. They have been.

Q. You found that they appear to have been paid by the United States Government?

A. They have been.

Q. And did you examine the contracts under which these charges had been made by the complainant company against the United States Government?

A. Yes. 9141

Q. Can you state what was the basis of the estimate of cost of steam supplied, and the estimate of loss of value in gas produced, due to the extraction of light oil, and the charges for these?

Mr. Chambers: I object that on the ground that the witness certainly cannot possibly know the internal arrangement of this company.

The Master: He may ask if he knows.

Mr. O'Brien: We are getting into the realm

9142 which the witness does not pretend to be up on. That is an engineering proposition, and if the witness has built these figures up on somebody's else's estimate we want to know it.

Mr. Ransom: Not at all. There is no figure here that is not taken from a book, and no fact here that is not taken from a record. Here are certain bills that have been rendered to the United States Government and have been paid by the Government. I am asking the witness whether he is able to state from the record what was the basis on which the item charged
9143 and paid, in two instances, was computed.

Mr. Chambers: Why don't we get it from somebody who knows?

Mr. O'Brien: Somewhere there is a basis for this, which is an engineer's judgment.

The Master: I am going to permit this witness to state whether the books show the basis of that estimate.

Mr. O'Brien: Your Honor, I record my objection, based upon the fact that the books ought not to have been received in evidence without the underlying data, and the witness who made the figures was presumably some
9144 engineer who ought to be here as a witness in this case.

The Master: Objection overruled.

Mr. O'Brien: Exception.

By the Master:

Q. Tell us, Mr. Brundage, the basis of this estimate of cost?

A. The books show that the charges made were accepted by the United States Government.

Q. Is that all they show?

A. They do show the basis upon which the 9145
amounts were arrived at.

Q. Do you know what they were?

A. I haven't that clearly in my mind. I think I can tell you by referring to our working papers, but I haven't it clear enough in my mind to tell you at this time.

Q. Don't the books show?

A. The books or records show, because it is from the books and records that I have the information.

The Master: Go on with the next question. All this witness says is that somebody estimated the cost of steam fully. Isn't that it? 9146

Mr. O'Brien: Have you in mind what book tells that story?

The Master: Don't answer that.

Q. Referring to schedule 10 in Total cost to distribute 1918, will you describe how that was made up and what is embraced in that schedule?

A. This is made from the operating ledger accounts appearing at the folios set down at the left hand side of the sheet under the titles which appear to the right of the folios, and the amounts shown are either the totals of the columns appearing upon the pages or the totals of the pages themselves.

Q. This covers expenditures made by the com- 9147
pany for labor, materials, and expenses in connection with distribution?

Mr. Chambers: I object to the form of that question.

The Master: This purports to, does it?

The Witness: It does.

Q. Classified as they are upon the books of the company and with reference to the uniform system of accounts, of which the numbers of the appropriate accounts are shown in parentheses?

9148 A. The corresponding numbers are shown in parentheses.

Mr. O'Brien: Your Honor, I move to strike out that.

The Master: Objection overruled, with exception.

Mr. O'Brien: The basis of my objection is that there is a constant intertwining of these figures, with that ever ready inevitable uniform system of accounts.

The Master: I think that is correct, but I think they have got to in the nature of things keep their accounts in a particular way.

9149 Mr. Ransom: They may be subject to penalties of a most severe sort if they did not.

Mr. O'Brien: I say that with all due respect to Col. Hayward and Mr. Malthie.

The Master: And Judge Ransom.

Mr. O'Brien: And Judge Ransom.

Mr. Ransom: I was not there at that time.

Mr. O'Brien: I am not saying this of a gas case, but of other things.

The Master: There is only one thing that has occurred to me, that is, why there is not in the files of the Public Service Commission

9150 an inventory down to date as to just what this gas company uses in its business.

Mr. Ransom: There were statutory obligations to keep them in form concerning the property.

Q. The various items in this schedule 10 are taken from the books of the company?

A. They are taken from the operating ledger at the folio as shown.

Q. And have been verified by you in the manner which you have described?

A. They have. 9151

Q. On page 28 of schedule 10 under the title "Cost to distribute" and subdivision "Miscellaneous general expenses" there is an item of $31,250. for the United War Work Campaign.

The Master: What page?

Mr. Ransom: Page 29.

Mr. Chambers: It is down at the bottom.

Q. Did you reclassify that particular charge?

A. It is deducted from the total on folio 29 of this schedule.

Q. And is not included as an expense?

A. It is not included as part of the cost to dis- 9152
tribute. I included it in this schedule so the ledger accounts could properly be checked.

The Master: In other words it is included here but charged back on the next page?

The Witness: But deducted from the end, yes.

Q. On page 29 there is an item of "Contribution to the Employees Mutual Aid Society," uniform system of accounts No. G 859, in the amount of $40,327.71.

Mr. Chambers: Where is that?

Mr. Ransom: About the middle of page 29 9153
of Schedule 10.

The Witness: Against folio 1054.

Mr. Ransom: Have you looked into that charge as it appears on the books, and do you know what it is?

A. It appears on folio 1054 and is shown as payments made by the company to the Employees Mutual Aid Society under the plan of the organization of that Society, and is a contribution by the company to the employees, or rather is a contribution by the company to the society as a part of the

9154 compensation made by the company to its employees.

Mr. O'Brien: Your Honor, I object to that.

Mr. Chambers: I object to it.

Mr. O'Brien: I move to strike out the latter part of the witness' answer.

Mr. Chambers: Can't we have somebody who knows?

The Master: I think it is apparent on its face what it is.

Q. You have examined the plan of this Employees Mutual Aid Society?

9155 A. I have read it. I cannot say that I have examined it.

The Master: I will not take the witness' testimony as anything more than the fact that this company has contributed to this Mutual Aid Society $10,000 a year, and that is a proper item of expense. I should so rule if I were a judge.

Mr. O'Brien: Your Honor is not going to go into that until we get the whole story?

The Master: No. I mean so far as this item appears on the books I think it is a proper item of expense.

9156 Mr. O'Brien: You would look upon it as a proper item of promotion expense?

The Master: No, I think in these days of enterprises of this kind it is a proper item of expense to see that the employees are kept happy and contented by having a mutual aid society to which the corporation contributes.

Mr. O'Brien: Well, there are a very great many things that you might approve of, and I would say Amen to your Honor, along the line of so-called social welfare, patriotism, and

so on; but not in a rate case, where we are 9157
determining the confiscatory character of a statute. The same would be said of a fund for superannuated employees.

The Master: It is not necessary for me to decide the point at this time, but I should be inclined to say that that was a reasonable and proper expense in making and distributing gas.

Mr. O'Brien: But it has been ruled out by various commissions in the country.

The Master: I think I will rule it in.

Mr. Ransom: It has been ruled in by most of those I know anything about. 9158

Mr. O'Brien: Your Commission did not rule it in.

Mr. Chambers: There is a big sum to pay for publicity and those things.

The Master: This is not publicity.

Mr. Ransom: Counsel has just made a statement which I believe is not warranted; and so far as I know the regulatory commissions in this State have included that.

The Master: You need not argue it, Judge Ransom. So far as I am concerned, unless I change my mind, which is improbable, I am going to rule that this item of $40,000 is a 9159
proper item of expense, and I do not care what the judges or commissions have done. If I am wrong the courts will have to reverse me, but I am going to put it in.

Mr. O'Brien: I would suggest, your Honor, that you keep your mind open on that until we get to that matter later.

The Master: I will keep it open, having expressed the open conviction that those are proper charges.

9160 Mr. O'Brien: I note an exception to your Honor's ruling.

The Master: I do not care what other courts or commissions have done. If I am wrong they will reverse me.

Mr. O'Brien: But while you might stand by the general proposition that money spent for the welfare of employees might be considered a necessary expense, there might be special conditions surrounding even this expenditure which would stamp it as an unwonted extravagance.

9161 The Master: That might be. When I say what I did say, I of course must assume that it was done legitimately and honestly and decently, and not extravagantly.

Mr. O'Brien: I know, but if they are going to come in and hammer at the increased wage and are going to talk about the lounging rooms and the rest rooms and superannuated employees, the degree to which they have done this is a question, your Honor, and I submit the ruling is of interest at this time.

The Master: I cannot say any more than that I am not deciding the matter at this

9162 time, but I have indicated how my mind runs.

Q. This charge appearing on the books, is that based upon, or is the plan of this society based upon, any written or printed plan which has hitherto been produced in this court?

A. I do not know whether it has been produced here. There is a printed plan and I have seen it in the court room, and I have a copy here.

Q. Will you produce it? I have a copy here. Is this it (indicating)?

A. Yes. 9163

Mr. Ransom: I will mark it for identification.

Marked Complainant's Exhibit 281 for Identification.

Q. This was obtained by you from the files and records of the company?

A. Yes.

Mr. Ransom: I will offer it in evidence. I do not care a great deal whether it goes in evidence or not.

The Master: Are you offering it with the hope that they will object to it? 9164

Mr. Ransom: No, I am hoping that they will not.

The Master: Any objection to it?

Mr. Chambers: I have not seen it. I asked for it two or three weeks ago, but I have not seen it. I suggest that we suspend a minute until I read it. I mean go on, and I will read it between times, before I object. That shows I am not trying to delay, that I am willing you proceed while I read it.

Mr. O'Brien: I have not seen it, but I object to it, your Honor.

Mr. Ransom: That is the usual attitude. 9165

Mr. O'Brien: It is the constitution and by-laws of the employees, and it is extraneous to this business. I do not need to know what the rules of order are, or Cushing's Manual, and the other things that may be in that little booklet.

Q. On page 29 of Schedule 10, there is an item, "Duplicate Gas Charges", uniform system of accounts, G. 853. What is included in that item?

A. It represents the cubic feet of gas at the

9166 standard rate of 80 cents, used by the company in its own operations, and included in its operating expenses, and set up here as a credit in accordance with the uniform system of accounts' construction.

Mr. Chambers: I move to strike out that part of his answer wherein he says "used by the gas company", on the ground that he does not know that they used any of it at all.

Mr. Ransom: It is what the books show.

The Master: Objection overruled. The motion to strike out is denied.

Mr. Chambers: Exception.

9167 Q. How are these duplicate gas charges absorbed in the cost to distribute or in the operating expenses of the company? Are they charged in the operating expenses of the various departments where the gas is used?

A. They are charges in the operating expenses wherever gas is used.

Q. There is also an item on this same page 29 of Schedule 10, "Undistributed Adjustments", uniform system of accounts, G. 852, with a reference to an explanatory schedule 10-A. Will you please describe what it comprehended in that schedule and how it was made up?

9168 A. The total amount of the account, $42,946.96, appearing at folio 1070, and by referring to the original entries as shown in the ledger account I have made an analysis of the items and set them out in this schedule and the items shown herein arise from the different sources as set out in the schedules. It comprises both credits and debits.

Q. These are various adjustments otherwise distributed, which under the uniform system of accounts, are put in this category?

A. They are provided to be dealt with in this way

under the uniform system of accounts, classification 9169
G. 852.

Q. Covering such matters as foreign and mutilated coins, received in prepayment meters, unclaimed wages, proceeds from the sale of scrap, less cost handling and the like?

A. Yes.

Q. Referring to schedule 11, page 31, "Uncollectable Gas Bills, 1918", will you state what is embraced in that schedule and how it is made up?

A. These amounts, or the total amount of $95,330.22 appears on the operating ledger, folio 1077 and I have shown the amounts reported by the 9170
various branch offices separately, including the general office, as being uncollectable gas bills. They are amounts which are written off as uncollectable gas bills at the expiration of two months after rendering of the final bill.

Q. That is, it represents the uncollected consumers' accounts remaining open two months after the final bill has been rendered?

A. Yes, sir.

Mr. Chambers: I object to the form of the question.

The Master: It is allowed.

Q. And the amounts collected from such ac- 9171
counts previously written off is deducted?

A. This represents the net amount.

Q. So that if any does later come in after an amount is written off as uncollectible it is credited to this account?

A. It is credited on the reports to this account.

Q. So this is a net amount in that respect?

A. It is.

The Master: That is a continuing account, then, coming from previous years?

9172 The Witness: This is the amount that has been written off during this year, and if any amounts have been written off in prior periods, whether in this or other years, and are subsequently collected or collected during this year, they are credited in this year, reducing therefore the amount written off for this year.

The Master: Are you quite sure, for instance, that as to 157 Hester Street this amount is not carried over as a balance from last year?

The Witness: It is not a balance at all. It represents the amounts that are written off
9173 this year, less the amounts collected this year, which have previously been written off.

Q. That is, the account is only open two months, and then it is treated in this way?

A. It is kept in accordance with the uniform system of accounts.

Q. I think what your Honor means, as my associate has just suggested, is that each year the uncollectible bills are written off in profit and loss as though not actually collected. Isn't that true?

A. The uncollected bills each year are written into this account called "Uncollectible gas bills." That is the net amount each month as reported.

9174 Q. How is it treated at the end of the year?

A. And at the end of the year the account is closed in the company's general profit and loss account.

Q. And the various items in this schedule are made up from those appearing in the books of the company, in ledger folio 1077?

A. They are.

The Master: These amounts are carried into the general profit and loss account?

The Witness: Yes. $95,330.22 is closed into profit and loss account for the year.

Q. Schedule 12: "Renewals and replacements, 9175
1918, plant withdrawn from service." Will you state if you please the sources of this schedule and what it shows?

The Master: What it purports to show?

Mr. Ransom: What it purports to show.

A. The company has on its operating ledger, folio 364, an account entitled, "Plant withdrawn from service suspense", to which is charged the cost of certain property as is withdrawn during the year, plus the cost of withdrawal and less the salvage.

Q. That is the difference between the original 9176
cost of the property retired from service, plus the cost of withdrawals, and less the amount of salvage?

A. Yes.

Mr. O'Brien: I object to that.

The Master: It is allowed.

Mr. O'Brien: It assumes bases that are not already in the record in this case.

The Master: That is what this account purports to show.

Q. And this is the figure shown by the books and taken from the books? 9177

A. It appears on ledger folio 364, of ledger A.

Q. Schedule 13, page 33, "Interest on consumers' deposits 1918." That is made up from what source and how, and what does it purport to show?

A. It is taken from the operating ledger, folio 1050, on which appears the amount of $40,905, and represents the amount of interest paid by the company upon the withdrawal of deposits, and includes at the end of the year the accrual of the difference between the consumers' deposits at the

9178 beginning of the year, and the consumers' deposits at the end of the year, at the rate which has proved to be the company's experience over a period of ten years.

Mr. O'Brien: Is that in A or B?

The Witness: That is on ledger folio 1050, which will be in P.

Mr. O'Brien: Judge Ransom, did you notice that we jumped in this operating ledger from——

Mr. Ransom: I object to the interruption of counsel to take up some matter that may be

9179 interesting after adjournment.

The Master: Go on. The next question.

Q. All of these items appearing on schedule 13 are taken from the company's books?

A. Yes.

Q. In connection with the account of the respective branch offices?

A. Yes.

Q. And the several amounts set opposite the respective offices are the actual amounts shown by those respective offices?

A. They are the amounts shown by their re-

9180 spective monthly reports.

Q. That is, where the consumers close their accounts the accumulated interest is calculated, whether it had been earned in 1918 or in 1918 plus previous years?

A. Right.

Q. And the whole amount is paid to the consumers at that time?

A. It is, and included in this account, and in this year in which it is paid, and the experience

has been based upon compilations made by my- 9181
self,——

Mr. Chambers: Just a minute. I object to that.

The Master: I will take the answer and see if I will strike it out.

A. (Continued.) That the average amount of interest paid by the company on each account is 12 per cent.

Mr. O'Brien: I move to strike out the answer as not responsive and as giving a conclusion of the witness.

The Master: I am going to take it as the 9182
conclusion of the witness.

Q. In this matter did you check up the computation appearing in the books, did you, in the manner which you have described, check the accuracy of that computation?

A. I did.

Mr. O'Brien: I ask to have the previous answer of the witness read.

(Answer read by the stenographer.)

Mr. O'Brien: I thought the witness was bringing in his experience with other companies or other compilations in these matters.

Mr. Chambers: If the Master please, I move 9183
to strike out what the witness said in regard to Schedule 13, and all that he said in regard to that schedule, upon the ground that these consumers' deposits have nothing whatsoever to do with operating expenses.

The Master: Motion denied.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

Q. Now, Schedule 14, page 34, is taxes and interest thereon, 1918, and shows three columns, to-

9184 tal, applicable to miscellaneous rent revenue, and chargeable to expenses. Will you state the sources of that schedule and describe in detail how it was repaired?

The Master: Let me just interrupt the witness to ask.

By the Master:

Q. Were some of these items here not applicable to some of the gas business?

A. Yes.

Q. Was that your estimate?

A. It is.

9185 Q. Based upon what?

A. Based upon an analysis of the return made by the company to the authorities of the State of New York for the gross earnings tax.

Q. Did they have earnings other than from the gas business?

A. We have separated the earnings, if you will look at the next sheet, sheet 35 shows the total amount of earnings as shown by the return to the State of New York. We have separated the earnings shown on that return into two columns, those applicable to the gas business and those not applicable to the gas business; and based upon the 9186 column showing that applicable to the gas business, we have calculated the amount of tax at the rate of one-half of one per cent.

By Mr. Ransom:

Q. That is, you obtained a copy of Exhibit 178, in this case, and of the list of property, or classification of property corresponding to Exhibit 178?

A. Yes. You will find on this Schedule 14-A, folio 35, that there are two items that are split, miscellaneous rent revenue, and the item appearing in the column applicable to the gas business, the

miscellaneous rent revenue derived from the prop- 9187
erties classified as being used in the gas business. The amount put in the other column is the rent revenue derived from properties not considered as being used in the gas business. The other item of joint gas rent revenue which is split, shows in the column applicable to the gas business the amount of $99,616.65, which is in accordance with the amount shown on Schedule 6, on folio 7; and the amount shown in the column as not applicable to the gas business, $120,164.09, is the amount which is derived from the joint gas rent revenue, and also considered as not a part of the revenues, and which 9188
is set out on Schedule 6, folio 7. The total of the revenues derived from the gas business is $17,694,772.10, and as computed at the rate of one-half of one per cent the amount of the tax is $78,473.80, being the portion of the total of the gross earnings tax which is considered as being applicable to the gas business, and is shown on page 34, Schedule 14.

The Master: The total tax being $117,279?

The Witness: $117,279.

Q. And in your computations or calculations and division with respect to the property used in the gas business, did you follow and conform to Exhibit 178 in this case? 9189

A. Yes.

Q. And these two divided items which you refer to in Schedule 14-A refer back to and are shown upon Schedules 6 and 7 respectively?

A. Yes.

Q. And the other items do not represent divisions?

A. No.

Q. Have you anything further to add regarding Schedule 14?

9190 A. The other items shown under the title of New York City taxes, special franchise and real estate of corporations, are both taxes that are assessed in connection with gas operations. The real estate tax, the exhibit of which is shown on 14-B shows the total real estate tax of $539,272.90, of which the amount not applicable to the gas business, that is, the amount of tax——

Mr. Chambers: Just a minute. I am going to object to that upon the ground that this is a determination made by the witness, and is therefore improper. The Court is to deter-

9191 mine that. Exhibit 178 is unreliable and inaccurate.

The Master: That may be, Mr. Chambers, but as I understand it, he has taken the entire tax assessed against the company for real estate, and has assumed that the part on Exhibit 178 was applicable to the gas business. This computation is based on Exhibit 178, and if that is wrong this is wrong.

Mr. Ransom: I object to the interruption.

Mr. Chambers: More than that, he has determined the *modus operandi* for apportioning it.

9192 The Master: I am going to let his answer stand.

Mr. O'Brien: Your Honor, I would state that during the examination of the witness as to these particular pages I have refrained from making an objection assuming that he was just explaining the meaning of these columns, the method by which he set forth these figures.

The Master: That is all he is doing.

Mr. O'Brien: As to anything else of course

I would object, because whether something is 9193
applicable to the gas business or not is not within the scope of this witness' knowledge.

The Master: He is simply identifying property which he figured on, that is all. In other words, he, in substance says, "You find that the company paid a total real estate tax of $539,000. I found that the part colored in pink on Exhibit 179 paid $508,000." That is all he says.

Mr. O'Brien: Well, there may be property at Inwood, there may be property on the west side of Manhattan, there may be other prop- 9194
erties used in the gas business.

The Master: That is right, I am taking his figures as he has them.

Mr. O'Brien: Including the pink part, that does not help us, if there are other properties on which they are paying taxes and that are used in the gas making business.

Mr. Ransom: Do you claim that we should make our expenses higher than they are?

Mr. Chambers: I take it that you are not going to relieve them from proving in a proper way the taxes on each piece of property.

Mr. Ransom: These are the amounts of 9195
taxes shown by the books.

Mr. Chambers: But you have to prove you have paid the taxes on each particular piece of property. I am asking the Master if he is not going to make them prove what the books show on every piece of property.

The Master: I have ruled on this question before me. The motion to strike out is denied.

Mr. O'Brien: Exception.

9196 By the Master:

Q. I see that under the United States government taxes you have likewise made an apportionment, as appears by Schedule 14-C?

A. Yes.

Q. How did you get that proportion?

A. That is the division made by the company as between non-operating revenue deductions, and operating taxes.

Q. I don't get that?

A. It is the apportionment made by the company as between taxes—that portion of the capital
9197 stock tax which is applicable to their gas operations, and that portion of it which is applicable to other business than the gas business.

Q. You didn't have anything to do with that?

A. I did not.

Q. That is set up in the books?

A. I followed the company's apportionment.

Q. That is set up in the books?

A. That is set up in the books.

Q. You took in that respect what the books show?

A. Yes, sir.

Q. There are not any other adjustments under Schedule 14, are there?

9198 A. Except the interest on unpaid taxes amounting to $450.35, which is deducted from the $1,796.11. That is an apportionment, because that follows the amount of the taxes deducted as shown in Schedule 14-B. Otherwise there is no apportionment.

Q. In other words, as you figured it out during the year 1918, the complainant company lost $198,633.13 in making and selling gas?

Mr. O'Brien: I will have to object to your Honor's question.

The Master: I am asking him whether that 9199
is what he figures.

The Witness: That is what this summary shows.

Q. Is that what you figure?

Mr. Chambers: Where is that?

The Master: On the first page of the summary.

Q. Is that your summary?

A. Yes, sir.

Q. As you read these books for 1918, you find that the company lost $198,633.13 in making and selling gas? 9200

Mr. O'Brien: I object to your Honor's question.

The Master: I am asking him whether that is what he figured?

Mr. Chambers: I have to object.

Mr. O'Brien: Have you asked him what these figures purport to show?

The Master: I asked him whether as he reads the books for 1918, whether that is what he reads from them? Is that the idea?

The Witness: Yes.

Mr. O'Brien: I note my objection to it. 9201

The Master: I just want to get that clear in my mind.

Mr. O'Brien: The witness hesitated about it. He doesn't seem to be sure.

The Master: He may have hesitated because he did not get the question.

The Witness: To give you a chance to object.

By Mr. Ransom:

Q. Have you made up this first page of this Exhibit 205 for identification as a summary of the

9202 figures appearing on the several schedules concerning which you have been interrogated?

A. Yes.

Mr. Ransom: I offer in evidence each of these schedules.

The Master: You offer in evidence the whole thing, don't you, marked Complainant's Exhibit for identification?

Mr. Ransom: Yes.

The Master: You seem to hesitate now.

Mr. Ransom: I thought we might perhaps get along better if the schedules were marked

9203 in evidence as separate schedules.

The Master: No. There are some items here that we discussed the other day; for instance, on schedule 6 and schedule 7; how are you overcoming that?

Mr. Ransom: That was one of the reasons why I hesitated. The situation as to that item at the bottom of page 7 is, the testimony of Mr. Wood, who will be the next witness on the stand, will be necessary upon that point.

Mr. O'Brien: Your Honor, I would like to be heard at length upon my objection, if you will defer it until to-morrow morning. I want

9204 to proceed from page to page and give you the reasons why it should not be received in evidence, and I prefer to wait until to-morrow morning.

Mr. Chambers: I want to examine the witness preliminary to my objection.

The Master: As I understand it, Judge Ransom, you offer Exhibit 205 for identification, subject to connecting the item of $120,164.09 on Schedule 6?

Mr. Ransom: And the first item on Schedule 7, and the consequent effect on the totals. 9205

Mr. Chambers: I want to be heard here, but I do not want to interrupt or interfere, but I want to say something right here.

Mr. Ransom: Mr. Wood's examination will cover a great multitude of things, and I hesitate to put him on.

Mr. Chambers: We have enough to attend to right here, without calling another witness, because I want to say something here. This is an important phase of this case. Is your Honor ready to hear me?

9206

The Master: Yes, when you all take your seats.

Mr. Chambers: Well, I want to speak.

The Master: As I understand it, Judge Ransom now offers in evidence Complainant's Exhibit 205 for identification. He has in mind a criticism I made of Schedules 6 and 7, containing matters based upon statements not appearing in the books of account, and my criticism that these schedules, insofar as they contained those sections, are not based on entries in those books. Is that correct, Judge Ransom?

Mr. Ransom: I think they are really based on matters which appear in the books, but not in the precise form there shown. 9207

The Master: The value of property owned by other companies does not appear in your books, does it?

Mr. Ransom: I don't just see what you mean; no item of other company's property.

The Master: There was an adjustment made?

Mr. Ransom: No. It is based on the *pro*

2908 *rata* value of jointly used facilities. It is our property, and it is a certain proportion of our property that we use, and in view of the fact that we get some revenue from it, we exclude it from the property on which we are entitled to earn a return. Now, I understand on that exclusion your Honor has a view, that in spite of all that our books show, that we have got to give a little further——

The Master: No; I thought this adjustment was based on property owned by other companies.

9209 Mr. Ransom: Oh, no, not at all. That represents our property on which we claim a return of this $120,000, and in order to show a basis upon which that reduction is made, we reduce our earnings to that extent, and it has a corresponding effect on our property, and in order to show the basis of that we have to show——

The Master: I misunderstood the situation on that.

Mr. Ransom: The situation there is exactly the same. We get a quota of rent for this building.

The Master: $142,000?

9210 Mr. Ransom: Well, that in itself is not the total rent received. The total rent received by the company for the general office building is $308,000. The witness has made a certain allocation of that which he has described, our rental revenue being $308,288.99.

The Master: Where does that appear on 7?

Mr. Ransom: That does not appear on 7, but it does appear by adding $182,117.83 plus $169,507.27, which makes the big amount.

The Master: No. 9211

Mr. Ransom: Plus——

The Witness: Plus $125,871.46, which is included in the $169,000?

Q. Yes.

A. Which is the six per cent. on the investment allocated to tenants in the 15th street building.

Mr. Ransom: Here we have a building not entirely occupied by us, in which there are certain tenants, we get a certain rent from it, and we say that to that extent, six per cent. on the investment to that extent of the total investment in the building, there should be that 9212
deduction made in determining the amount on which we claim a return, so that that is a book figure.

The Master: I will hear your objection, Mr. Chambers.

Mr. Chambers: When this was offered before, if my memory serves me aright, speaking of Exhibit 205 for identification, I asked to examine the witness preliminary to making an objection, and the Court picked out two or three items here, which satisfied the Court that the paper was not entitled to be offered.

The Master: Yes, I apparently misunder- 9213
stood that, I think, Mr. Chambers.

Mr. Chambers: Well, I was asked then not to proceed further because your Honor was not going to allow it in.

The Master: Do you want permission to cross-examination before I pass on this motion?

Mr. Chambers: Yes. I want permission to make a preliminary examination of the witness.

9214 The Master: Go ahead; that is all right.

Mr. Chambers: For the purpose of framing an objection.

The Master: That is all right; go ahead.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Teele, will you turn to schedule 14. Schedules 14-A, 14-B and 14-C, are supplemental to Schedule 14, are they?

A. Yes.

Q. Now, is there anywhere in the books that have been offered in evidence, taking the first item, "New York State Taxes, Gross Earnings", any-
9215 thing to show those first two amounts there?

A. Do you mean is such a division made on the books?

Q. Yes.

A. Such division is not made on the books.

Q. Is the sum total of those two items in the books, speaking of the first item, gross earnings?

A. Gross earnings and gross earnings tax of $117,000 is on the books.

Q. Just that sum alone?

A. Yes.

Q. How is it on the books, just gross earning tax, $117,270?

9216 A. That is the amount of the gross earning tax.

Q. That was for the year 1917?

A. 1918.

Q. You are sure? Wasn't it 1917?

A. Yes; positive of it.

Q. Did you go and get the bills to see if it was not 1917?

A. I saw the return made by the company.

Q. It was for gross earnings 1917, though?

A. It was the tax for 1918.

Q. Will you just show me the entry in the book

of where you got it from? Just strike that out. 9217
Was this paid, was this tax of $117,000 paid?

A. My recollection is that it was. I cannot say without referring to underlying papers.

Q. Will you show me in the book the entry referring to that, everything that relates to gross earnings, from which you made up this schedule?

A. Well, do you mean the gross earnings tax entries?

Q. Yes; I want to see whether—where you got that from and what there is in the book.

A. I shall have to refer to other papers, in order to get the direct reference. 9218

Q. Well, all right.

A. Because all the taxes are accrued, and credited to accrued taxes. (Examining books.) The amount of the tax that was paid was found on ledger folio 1122.

Q. What is that amount?

A. That is the accrued taxes, and it is included in an amount of $207,105.75 paid to the State of New York on voucher No. 18,265, and that includes the gross earning tax and the excess dividends tax, both paid together on that check.

Q. You don't find any credit, of $117,270.90 on that ledger? 9219

A. Not on that ledger, no.

The Master: Where did you find it?

The Witness: This amount of assumed taxes represents a monthly accrual of the taxes which the company has to pay during the year 1918, and the taxes that are paid are charged against the accrued tax account, and there is a monthly accrual of the expected taxes to be paid. When the exact amount of the tax is determined then an adjustment is made, either

9220 charging or crediting the accrued tax, in order to bring into the accrued tax account the exact amount of tax which will subsequently be discharged.

The Master: Is this one hundred seventeen thousand odd the amount entered as the accrued tax?

The Witness: $117,000 is included in the amount which is made monthly, and the monthly accrual, and the amount of the tax charged against the accrued tax account.

Q. As a matter of fact, $117,270.90 is an esti-
9221 mated amount?

A. It is not.

Q. What is it?

A. It is the exact amount that is paid.

Q. Well, now, show me where that amount was paid?

A. It is included in this voucher of $207,000 to the state of New York.

Q. What became of the difference between $117,000 and $207,000?

A. I told you this includes another tax; it not only includes the gross earnings tax, but it includes the excess dividend tax, which is payable to the
9222 state of New York, and they were both paid in the same voucher.

The Master: Did I understand your answer to be that you got the $117,000 from the voucher itself?

The Witness: Yes, from the voucher itself.

Q. Not from the book?

A. Well, it is included in the book.

The Master: What was that other tax?

The Witness: Because it was included in the voucher.

The Master: What was that other tax? 9223

Mr. Chambers: Excess dividends.

The Witness: Included in voucher 18,265, which shows the exact amount being paid and what it is being paid for, and you find that $117,000 does not appear on the ledger account, but it does appear in the books.

The Master: How did you charge the excess profit tax?

The Witness: We hardly charged excess profit tax on the gas revenue, because they produced no revenue.

Mr. Chambers: They did in Albany. 9224

The Witness: Because they produced a revenue of less than four per cent.

Q. That is page 1122 of the operating ledger for 1918, showing the notation as against that amount of $207,105.75 of 1/10/19, showing the tax was paid in 1919?

A. Quite right.

Q. So that tax was not paid in 1918?

A. No one said it was. The bills are not necessarily charged on the day they are paid.

Q. How much does it show that they set up here each month for that tax? 9225

A. The monthly estimate on accrued taxes?

Q. Yes.

A. They set up various amounts.

Q. Well, for January, 1918?

A. If you want an analysis of the amount of accrued taxes, showing what was set up, I could give it to you. I have analyzed it item for item.

Q. You mean you have January and February?

A. I have the balance brought over for unpaid taxes on the first of January, 1918.

9226 Q. What was that?

A. I have the entries which I made month by month, showing what they are for.

Q. You mean they set up no regular stated amount per month?

A. Well, it runs very regular.

Q. Suppose I say January, 1918?

A. For the month of January, 1918, the balance brought forward from 1917 as being unpaid taxes was $1,596,988.49.

Q. And then what did they——

A. They credited this account with a monthly
9227 estimate of $145,326.52; they also credited this account with $22,500, as an estimate, and they also credited this account with $5,417.83 as an estimate, these three amounts. In the succeeding month the amounts change slightly.

Q. Well, jump down to May, that seems to be a very low amount?

A. The month of May they credit $102,500.18 as a part of a monthly estimate; they also credit the $22,500., which is credited to January; they credit $5,417.83; they also credit $2,950. and $1,840.80. In other words, this is an account which is a clear-
9228 ance account. The liabilities not being fully known or ascertained, in order to make the company's monthly operating statement on a comparable basis, they charge in to the monthly operating expenses and set up to the credit of a liability account, the amount which they expect they will have to pay, then when the amount is actually ascertained, if that estimate is under or over, it is corrected at the time, and then when the bill is paid it is charged against this estimated account.

Q. Was it under or over here, the estimate?

A. In which case?

Q. The gross earnings? 9229

A. The amount that was actually paid was $117,270.90.

Q. Yes. What controls the amount there?

A. They were making a monthly estimate of the amount of taxes they expected to pay.

Q. If your figures are correct there, they have a very large surplus, with the accruals on that gross earnings, haven't they?

A. Why do you say that?

Q. Because you read off a million carried over from 1917?

A. That represents the unpaid taxes at January 9230
1st, not only for this tax but for all other unpaid taxes.

Q. On December 31, 1918, what was the amount in that fund, that estimated fund?

A. There isn't any fund, it is an estimated liability, and the amount of the unpaid liability as of January 1st was, as I told you, over a million dollars, $1,595,988.49. In other words, this account is used for setting up the various tax liability accounts; instead of setting up each one for itself they set them all up here in this account.

The Master: When you take the actual amount here for taxes for a given year and dis- 9231
regard the estimate, you get a more accurate result, do you not?

The Witness: If the taxes are paid within the year, yes, but unless the taxes are paid within the year, then you omit from the year's operations those taxes which have been assessed or accrued and not yet paid.

The Master: Take the year 1918, and take the taxes assessed against the property for that year and charged against it but not paid,

9232 and taking that as liability instead of estimated liability, you get a more accurate result, don't you?

The Witness: You would then set up the actual liability instead of the estimated.

The Master: In your figures you have taken the actual liability?

The Witness: I have taken the actual, because the actual was determined. The accounts for the year were closed.

The Master: When it comes to the operations for 1918, and you charge $117,000. for a
9233 tax, you are taking the exact amount of that tax chargeable against 1918 operations?

The Witness: Yes.

Q. So this entry was made in 1919, it must have been, wasn't it? That was not paid, that tax for gross earnings, until 1919, so they must have gone back and written that into this book?

A. They did not go back. It was in there before the accounts for 1918 were closed. It is included in 1918.

Q. That account was kept open?

A. No more than every other account is kept open.

9234 Q. Well, that entry must have been made?

A. I never saw an account, in my life, that was closed the night of December 31st.

Q. Well, that entry must have been made in 1919, that $117,000.?

A. Of course it was made in 1919, because it was paid out of the voucher that was drawn in 1919.

Q. And you had to go and look into the 1919 vouchers to find it out?

A. I found it in the 1918 vouchers, although drawn after the 31st of December, but it was included in the vouchers for 1918.

Q. Now, this amount of $38,797.04, did you find 9235
that in the books of the company which have been offered in evidence?

A. I have stated that that is an apportionment of $117,270.90 and it is an apportionment based upon the figures as shown on page 35 of this statement, Schedule 14-A.

Q. In other words, that amount does not appear anywhere in the books offered in evidence?

A. Only as a part of $117,270.90. The identical figure does not appear.

Q. Where on page 35 have you set forth the basis of that apportionment? 9236

The Master: The whole page?

Mr. Ransom: The entries taken from the book.

Mr. Chambers: The whole page is the apportionment, I see.

The Master: In other words, he has analyzed the total receipts of gross earnings, and as an apportionment in the manner he has shown in the two columns, he has arrived at the result of fifteen million odd as applicable to the gas business and seven million odd not applicable to the gas business, and in that proportion he has adjusted this $117,000.? 9237

The Witness: That is correct.

Q. Did you pick out these various items set forth on page 35 yourself?

A. I set them down as shown here.

The Master: Who segregated them?

The Witness: I did.

The Master: They are not segregated that way on the books.

The Witness: They are not.

Q. The bond income: What bond income is that, and why did you put it in "not applicable to gas

9238 business"? First of all, what bonds are they, what bond income?

A. The income from the bonds—securities owned by the company.

Q. You mean like bonds of the American Tobacco Company, if they own any?

A. Well, whatever the securities are which they own in the form of bonds, which is the accrued income during the year 1918 on those securities.

Q. Did you have a list of them?

A. Why, certainly.

Q. They are in here, I take it, in the books of-
9239 fered in evidence?

A. The income from securities is shown there and the securities owned by the company are shown there.

Q. No, I am speaking about the bonds, a list of the bonds. Are they here in the books on some page so we can see them?

A. I do not think a list of the bonds is there, but the total securities of various classes are there. A list of the bonds and other securities will be found in subsidiary records.

Q. If you did not have the name of each corporation that issued the bonds before you, and if
9240 you did not know what brought about that transaction, how would you know that it was not applicable to the gas business?

A. I did know.

Mr. Ransom: I object to the question.

The Witness: I did know.

Q. Where did you find the information?

A. I analyzed the income from investments as shown by the books and found out what securities the income came from.

Q. Then you did have a list of the bonds outstanding?

A. Certainly. 9241

Q. Did you get it from the books offered in evidence?

A. I got it from the books or the records.

Q. Which? We want to know if it is from the books offered in evidence.

Mr. Ransom: I think it is quite immaterial.

Mr. Chambers: If so, which ones?

A. I do not recall at this time whether the details of the securities owned are set out in the ledger or in the journal. The income from the investments had been traced back to its source, so that we were able to make an analysis of the in- 9242
vestments of various kinds.

By the Master:

Q. Mr. Teele, is not this bond income from all the bonds owned by the company?

A. Yes.

Q. Of any company?

A. Of any company.

Q. Gas, electric or any other kind?

A. Any other company.

By Mr. Chambers:

Q. Liberty bonds?

A. Liberty bonds are set out separately.

Q. Did you trace back to see where the money 9243
came from that was invested in these bonds?

A. Where the money came from? Do you think it is possible to trace it?

Q. I do not know what you did?

A. I could not trace it.

Q. What did you have to find out this amount of $673,000? You said you traced it back; tell us step by step what you did do in that regard?

A. I took the entries in the operating ledger representing income from securities.

9244 Q. Was that set forth in a lump sum like $673,000?

A. I believe the total of the account is that.

Q. Can you state that with certainty—that it was?

A. I can look and see (examining book).

Q. Are you able to say now, Mr. Teele?

A. This $673,000 is taken from the return made by the company and is based upon the twelve months ending October 31, 1918, and is made up of the bond income from the United Company of $381,599.61, the bond income from the Brush Company
9245 of $16,500, the bond income of the Astoria Company of $275,000, and the bond income of the New York & Westchester Company of $280, the total making $673,379.61.

Q. Where did you get your list of those bonds of the Astoria and other companies? Where did you find that?

A. The figures that I am giving you here are the figures taken from the company's gross earnings report.

Q. Filed with the State Tax Commissioner?

A. The State Tax Commissioner. It is based upon the twelve months ending October 31, 1918.

9246 Q. So really the basis of this figure of $38,797.04 so far as it relates to bond income finds its Genesis in the report made by the Consolidated Company to the State Board of Tax Commissioners, upon which the State Board computed the gross income?

A. Yes.

Q. Then I would not find that detail in the company's books here?

A. Which detail? The detail of the tax or the detail of the basis of the tax?

Q. No, the detail of the basis of the tax.

A. You would find ten months of it. You would 9247
find the income from January 1st to October 31, 1918. The months of November and December, 1917, which are included in the return you would find in the 1917 books, not in the 1918.

Q. "Sales less uncollected bills and allowances": Where did you get that from, that amount, that being a little item of $14,281,563.36—just a bagatelle?

A. All these figures are taken from the return made by the company to the State Tax Board.

Q. So that has its basis entirely in that return?

A. Absolutely. 9248

Q. That is where you got your figures?

A. That is where I got my figures.

Q. Where did you get the list of uncollectible bills, the same place?

A. I said all the figures which appear on this schedule were taken from the company's return.

Q. To the State Board of Tax Commissioners?

A. To the State Board of Tax Commissioners.

Q. Interest on loans and investments, $1,277,851.39: Where did you get that from?

A. I will repeat, all of the figures on this schedule were taken from the company's tax return.

Q. You mean all of the items on Sheet 35? 9249

A. Yes.

Q. You would say the same of all those items?

A. Yes, sir.

Q. You did not find it from any other source except that?

A. I took the copy of the company's tax return and apportioned the tax.

Q. We will go to another item. New York City taxes. You have an item here for special franchises. Where did you get that figure from?

9250 A. That is the amount assessed against the company for 1918.

Q. Was that an actual payment or an accrual?

A. It is the amount assessed against the company for 1918.

Q. Was it paid? It is contested, is it not?

A. It has not been paid, or has not been at the time I made up this statement.

Q. Did you find out that that was being contested by the company?

A. I believe I was so informed.

Q. So that, as a matter of fact, if the company is
9251 successful in its contest of that amount which has not been paid, some of it may go out?

A. That is true with regard to any taxes which they do not have to pay in the end.

Q. Have you readily accessible there the place in the books where that amount is set up?

A. Well, it is set up in the accrued taxes.

Q. That would be that same page you showed me before?

A. Operating Ledger A, folio 1112.

Q. That is in B, Mr. Teele, it must be?

A. My sheet says Operating Ledger A, folio 1112.
9252 It is a simple matter to explain. There was no juggling about it. It has been the custom of the company at the end of the year to bind the two books together and pending their use they have kept a class of accounts in one book and another class of accounts in another book, for convenience.

Q. Could you show us, Mr. Teele——

A. That is included in the monthly estimates.

Q. I mean, would you show us now what page you mean; we cannot find it.

The Master: You cannot find what?

Mr. Chambers: The special franchise $384,000.

The Master: It is included in the monthly 9253
estimates, he says.

The Witness: Included in the monthly estimates. The bonds at the beginning of the year, Mr. Chambers, amount to $1,596,988.49, the taxes accrued during the year amount to $1,664,918.41. Those taxes are made up as follows: Gross earnings, $117,270.90——

Q. That you have already given us.

A. (Continuing) Excess dividends, $89,834.85; real estate taxes, $544,063.70; Special franchise, $384,297.90; Real estate and corporations, $155,122.20; Personal taxes, $23,300; capital stock tax, 9254
$73,678; Federal income tax, $277,350.86. Those constitute the total credits to accrued taxes account for the year 1918.

Q. That special franchise tax, the figure on this Schedule 14 is not in the books at all in that amount. I do not find that amount there.

A. You mean you do not find it on the ledger?

Q. On the ledger.

A. It does not appear as an amount in the ledger, but it is in the books of account, otherwise I could not obtain it.

Q. Well, the only way you could find it would be 9255
to go to the amount assessed?

A. By referring to the entries to which the entries in the ledger refer me, going back to those entries.

Q. It is not among the books in evidence?

A. I think it is.

Q. Show me, will you, where that amount of $384,000 is; will you put your finger on it?

A. It is on folio 427 of the operating ledger for 1918, and is journal entry No. 1198.

The Master: We will adjourn to 9:30 o'clock

9256 tomorrow morning at the office of the Gas Company, room 1740. The purpose of going up there primarily is to look into the question as to the ability of the experts for the defendants to check up the schedules given to counsel, and which was the subject of discussion before Judge Mayer. If we get through with that end of the matter early enough, we will proceed to take evidence right up there until one o'clock. However, if it takes us most of the morning to straighten out this book item, we will not take any oral proof to-morrow.

9257 Mr. O'Brien: As I understand it, your Honor, at to-morrow morning's session the Complainant is going to supply on the record the information that was lacking, according to our contention, in the inventory.

Mr. Ransom: You don't understand any such thing at all.

The Master: We will see how that develops in the morning. Mr. Teele can arrange to be up there, can he not?

The Witness: I will be there, yes.

The Master: On Wednesday there will be two sessions, from 9:15 to 11:15 A. M., and

9258 from 2:45 to 5 o'clock in the afternoon.

Adjourned to Tuesday, September 16, 1919, at 9:30 A. M., at the office of the Consolidated Gas Company, 15th street and Irving Place.

Last Complainant's Exhibit 281.
Last Defendants' Exhibit U.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 9259

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 16, 1919.

Met pursuant to adjournment, at the offices of the Consolidated Gas Company, 15th Street and Irving Place.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton. 9260
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission.
MR. O'BRIEN, of Counsel for defendant Swann.

The Master: The stenographer will note that in pursuance of the direction of the District Judge, a session is being held to-day in room 1734 of the building No. 130 East 15th Street, New York City. The purpose of the hearing to-day at this place is 9261
to examine into the necessity for a further schedule or bill of particulars. I shall take items on page 146 for the purpose of starting the examination.

Mr. Ransom, in your schedule, page 146, you specify as the first item 1,246 feet of 1½ inch cast iron pipe. I understood you to say to the District Judge that the records of the complainant Company would indicate where that pipe was, when it was laid, its size and the character of material. Will you be good enough to produce in some form

9262 such records as may indicate that there is 1,246 feet of pipe and where it is?

Mr. Ransom: We have produced here to-day the two persons who are perhaps most familiar with respect to those matters, Mr. R. A. Carter, the Secretary of the Company, who has charge of the records of the Company, and has had for many years; and Mr. Colin C. Simpson, Jr., who is the engineer in charge of the street department, under whose jurisdiction the matter of mains more particularly is.

The Master: Is Mr. Simpson here?

Mr. Ransom: Yes.

9263 The Master: Mr. Simpson, will you let me have any map or chart that indicates where the various 1½ inch pipe is?

Mr. Ransom: We produce here our records, and Mr. Simpson will explain them.

The Master: One minute, I am going to get it in my way for a minute. Let Mr. Simpson do the talking, will you? You produce a book, do you?

Mr. Colin C. Simpson, Jr., General Superintendent of Mains of Complainant: I produce a book.

The Master: What is the name of that book?

Mr. Simpson: The Statement of Mains, Consolidated Gas Company of New York.

9264 The Master: And that book purports to contain what entries?

Mr. Simpson: That book purports to contain entries monthly, showing the total mileage, Consolidated Gas Company's mains, divided into the various sizes and on the date in question, December 31, 1918.

The Master: That is an accumulation of figures, is it not; that is carried forward from time to time?

Mr. Simpson: That is, sir.

The Master: Is there a book before this?

Mr. Simpson: There is, sir.

The Master: And that is carried back how far? 9265

Mr. Simpson: That is carried back to the time of consolidation.

The Master: In 1884?

Mr. Simpson: In 1884.

Mr. Ransom: November 11, 1884?

Mr. Simpson: November 11, 1884.

The Master: Have you got that book?

Mr. Simpson: I have all the books.

The Master: Let me have that first book, will you? (taking book). This book is ruled in columns. It is headed "Consolidated Gas Company of New York, statements of mains in feet for the month of December, 1918"—it is the first page that 9266
I am going to get at. It is not the first page in the book. I will take the first page in the book. Mr. Simpson is not called as a witness.

Mr. Ransom: Mr. Simpson called attention to that because that showed the figures as of December 31, 1918.

The Master: I will take the first page in the book. It is July, 1917. The first column is headed "Size"; next column, "Previous Month"; next column, "Laid during the Month"; next column, "Taken up"; next column, "Abandonment"; next column, "Total"; next column, "Disused during the Month"; next column, "Total Disused"; next 9267
column, "Total Abandonment".

Mr. Ransom: And then there are certain entries at the bottom.

The Master: Then there are certain special entries on the bottom. On this particular page appears the following: "Wrought Iron Mains Laid 6-inch, 3-foot, six 8-inch 126 feet, Total 126 feet no inches. The following disused mains have been written out of the company's assets as abandoned: 3-inch 562 feet, total 562 feet." Now you were going to show me the first book of this series.

(Mr. Simpson produces book.)

9268 The Master: Mr. Simpson produces a book entitled what?

Mr. Simpson: Monthly statement of mains. No. 1, 1886-1892, Consolidated Gas Company.

The Master: The first entry in that book is where?

(Mr. Simpson indicates in book.)

The Master: This book seems to be in branches, Branch 1, Branch 2, and Branches 3, 4 and 6, and then totals. Originally you kept it in branches, did you?

Mr. Ransom: The branches were the company's, were they not, that came into the Consolidated?

9269 Mr. Simpson: The branches were coextensive——

Mr. Ransom: Upon the consolidation the branch districts were taken over as the districts of the companies which made up the consolidation, the consolidation being as of November 11, 1884, four companies.

The Master: The first page under Branch 1 is "December 31, 1885, Statement of Mains in street from November 11, 1884, for the month ending December 31, 1885". The rulings seem to be a little different. They are ruled in columns headed as follows: Size, Previous Month, By Transfer, Laid, Reconnected, a blank column not headed, and

9270 then Total; then Transfer Taken Up not headed Total, Disused and Total. Then at the bottom is a space for remarks. Neither of these books show where the mains are laid, Mr. Simpson?

Mr. Simpson: They do not, sir.

The Master: What record shows where they are laid?

Mr. Simpson: We can find out where the main has been laid, sir, by taking a particular month; for instance, in Branch 4, in this month, 3,508 feet of 6 inch main were laid.

The Master: Yes.

Mr. Simpson: Now, you obtain the monthly re- 9271
port, which was the basis of this entry, from Branch 4, and on that in detail is given where the mains were laid.

The Master: Are those reports here back to 1884?

Mr. Simpson: No, sir, they are not.

The Master: How far back are they?

Mr. Simpson: The reports go back about ten or twelve years. Beyond that we have books which are copies of those reports made at the same time, with the same ruling and same pages.

The Master: Take the month of July, 1917. You laid 148 feet of 10 inch pipe, did you? 9272

Mr. Simpson: No, sir, 148 feet 10 inches of 8 inch pipe.

The Master: Oh, 148 feet 10 inches of pipe?

Mr. Simpson: Yes, sir.

The Master: Will you let me have the report showing where that was laid?

Mr. Simpson: I will, sir. We will have to get the three reports for July, 1917.

The Master (To counsel): When I have covered the situation to the extent that I think sufficient, I will let any of you gentlemen ask any questions that you want.

Mr. Hayward: I think you are doing very well. 9273

The Master: I know what you men want. Does that report (indicating) show the thickness of the pipe?

Mr. Simpson: No.

Mr. Robert A. Carter, Secretary and Vice President of Complainant: Yes, the report that you sent for shows the sizes.

Mr. Simpson: The size, not the thickness. It shows the standard pipe. We used one standard.

The Master: You never have changed it?

Mr. Simpson: No, sir.

9274 The Master: What is that standard?

Mr. Simpson: The standard is the Consolidated Gas Company standard, which is very close to the American Gas Institute standard.

The Master: Do you have any charts showing where your various mains are?

Mr. Simpson: I have maps showing all the information that we have as to the location of mains in the city.

The Master: Have you got one of those handy?

Mr. Simpson: I can produce one, sir.

Mr. Ransom: There are 873 of them.

The Master: I say one of them. Let me have one
9275 of them.

Mr. Carter: 763.

Mr. Ransom: Well, let us have one of them.

Mr. Simpson: Any particular one? I cannot identify it from that book until I get the report.

The Master: Let us get the report and we will follow that right through then.

Mr. Simpson: If you want any particular size I can bring down the chart that shows that size. They are as big as this table.

The Master: That is all right; that will not frighten us.

Mr. Chambers: May I ask some questions? Don't you change your standard weight every little while?
9276

Mr. Simpson: No, sir, we do not, Mr. Chambers.

Mr. Chambers: You never have?

Mr. Simpson: We have no occasion to do so. We are satisfied with our present standards.

Mr. Chambers: Then I must have gotten the wrong information.

Mr. Simpson: I think you must have

Mr. Edward W. Bemis: Could you show the years by the age of each size of main, dividing each size by years, showing, say, of the eight-inch, so many feet was laid in 1890?

Mr. Simpson: That is all in here. 9277

Mr. Bemis: No, it would be dug out, but if it was prior to 1884 you would not know its age

Mr. Ransom: That is, it goes back to the inventory which accompanies the consolidation, which is the one shown in the summary page to which——

The Master: Are you going to offer that inventory in evidence?

Mr. Ransom: Well, I do not suppose that we will.

The Master: The reason I ask is this ——

Mr. Simpson: I have the one for June 1917.

The Master: Let me ask you, Judge, my recollection of the Supreme Court decision was that they held the Master was justified in taking the invested 9278 capital on consolidation as the amount of capital issued pursuant to that consolidation agreement.

Mr. Ransom: There will be no question, I think, that the inventory as of the time of consolidation is the starting point.

The Master: Yes, that is right.

Mr. Ransom: You may distinguish as to whether December 31, 1905, in the Master's findings as of that date, is the starting point, but so far as the starting point of November 11, 1884——

The Master: Yes, why are you not going to submit in evidence your inventory as the schedule of property, the consolidation agreement and every- 9279 thing that makes up that starting point?

Mr. Ransom: Well, we have put in the consolidation agreement.

The Master: Yes, but not the inventories and not the amount of capital issued.

Mr. Ransom: I doubt whether that is necessary. Oh, yes, we have proved the capital issued on the very first day.

The Master: On consolidation?

Mr. Ransom: On consolidation.

The Master: What was that, about $30,000,000?

9280 Mr. Carter: Yes, about $30,000,000 of the authorized capital.

Mr. Ransom: For example, on the matter of mains, after you get past the figures of the different branches, the totals, here are the figures of the original schedule as of November 11, 1884, from which these figures are taken.

The Master: Do you not think I ought to have before me, so that I can make a finding that on consolidation the company was possessed of certain properties which, according to the consolidation agreement were capitalized at $30,000,000, and so on, and that since that time you have bought or dis-
9281 carded property, mains, or other things?

Mr. Ransom: I have not any doubt that in the course of the trial that will be offered. It was offered upon the other trial by the defendants.

The Master: I think you ought to do it. If your proof bears out the proposition and the defendants do not successfully upset your proof that it costs you more to make gas than you are getting for it, this case comes down to a pretty narrow proposition. You cannot be getting any income from invested capital if it costs you more to make gas than you are selling it for. This report for the month of July signed by William H. Darcy, Assistant
9282 Superintendent, gives the following information:

Report of Street Department for the month of July, 1917, mains and services. This shows that there was laid thirty-seven feet of 8-inch main and disused 1,002 feet of 8-inch main.

Mr. Ransom: In that district.

The Master: In that district.

Mr. Carter: You are checking up 8-inch main now.

The Master: There are 37 feet of 8-inch main there and there are 111 feet of 8-inch main here (indicating). That would make 148. So that these

two reports, one by Darcy and one by Mansfield, 9283
show that in the Hester Street department 111 feet ten inches was laid, and in the Darcy department, wherever that is, 37 feet were laid. Darcy's department is the 66th Street department, according to this endorsement.

Now, in the Hester Street department the report shows that he laid on 28th Street, West side, from ten feet west of the east corner to ten feet five inches east of the west corner of Broadway, 8-inch pipe, 22 feet 10 inches in length, I suppose. What does "C. I." mean?

Mr. Simpson: Cast iron.

The Master: Then he likewise reports that on 9284
28th street, north side, 5 feet 7 inches west of the east corner, 9 feet 6 inches east of the west corner of Broadway, 34 feet 1 inch of pipe, "W. I." wrought iron pipe. Then there is another item of 34th street, north side, from 2 feet east of the west corner to 6 feet west of the east corner of Seventh avenue, some 8 inch pipe, 54 feet 11 inches of wrought iron pipe. That is 54, 88, 108, 110, 111 feet ten inches. Can you get the map of, we will say, 34th street, east of Seventh avenue?

Mr. Simpson: It is possible that I can. That is a subway street and the maps are not complete on the subway streets. 9285

The Master: Can you give us 28th street?

Mr. Simpson: That is also a subway street. You see that is the avenue (indicating).

The Master: Possibly this work was done in the course of subway construction.

Mr. Simpson: Yes, sir.

The Master: On the 66th street report for July, 1917, the superintendent reports a new main laid on 39th street, north side, 18.6 to 38th street, east of the west corner of Broadway, 37 feet of 8 inch X. H. wrought iron, on account of subway construction.

9286 Is that the way your reports read in connection with this book?

Mr. Simpson: Yes, except that the phrase "account of subway construction" is only peculiar to the period and location covered.

The Master: The entries in these books that you show me of mains, in feet for the various months, are based on this report?

Mr. Simpson: Yes, sir.

The Master: So that anybody checking up the item of the amount of mains in the streets, can find when they were put down and where they were put down by calling for the reports of Mains and
9287 Services for the month in which those items appear?

Mr. Simpson: Yes, sir.

Mr. Hayward: Is there anything in these reports to show that what went down was old or new pipe?

The Master: Is there anything in the report to show that there was old or new pipe used?

Mr. Simpson: We lay nothing but new pipe. The pipe is first-class pipe put into the ground.

Mr. Hayward: You would not put in pipe that was so old that it was not any good any more, but you do put in pipe that is still good, even though it is cast iron pipe?

9288 Mr. Simpson: Yes, it is just as good as cast iron pipe.

Mr. Hayward: It is? According to that there would be no difference between new and old.

The Master: You have made your point, Mr. Hayward, that the reports do not show in every instance whether some of this pipe had not been used somewhere else. There is not any report that shows that?

Mr. Simpson: Absolutely not.

The Master: There is no way of finding out?

Mr. Simpson: There is no way of finding out.

The Master: Let us take some other schedule. 9289
What other schedule did one of you gentlemen criticise?

Mr. Simpson: The pipes come back to the job and it is charged into our account at the same prices current that year, good cast iron pipe and charged out at the same prices.

The Master: What chart is this that you have produced (indicating)?

Mr. Simpson: It should be 28th Street and Broadway.

Mr. Ransom: These are maps used by the Street Department in order to ascertain just what mains are in each street at any given point, and that is 9290
kept correct from time to time with the data as they come in on the various reports.

The Master: What do the various colors mean?

Mr. Simpson: They indicate the size of the mains, sir. That green is 12-inch, the red is 6-inch, the purple is 10-inch, the red is 6-inch. It is a color scheme that aids the eye very quickly to pick out a main.

The Master: Can you tell from this chart which mains belong to you and which belong to the Standard Company?

Mr. Simpson: Absolutely. They are marked right here, sir (indicating). This first one is the 9291
Consolidated's, the next is the Mutual's, the third is a 6-inch of the New Amsterdam, the fourth is a 6-inch of the Consolidated.

The Master: Opposite every section of main you indicate the ownership?

Mr. Simpson: We do, sir.

Mr. Carter: Also that is scaled to show exactly the distance from the curb, is it not?

Mr. Simpson: Yes, these are drawn to scale.

Mr. Carter: And also it shows the depth of the main?

9292 Mr. Simpson: One inch equals fifty feet. The engineers may laugh at that, but we purposely took an odd scale like that so that a man would not take the ordinary triangular scale and take the wrong side of it and try it out. We have scales made especially for that.

The Master: Does that show the depth it is laid in the street?

Mr. Simpson: The depth of the main is indicated opposite this point (indicating).

Mr. Ransom: And these are corrected from time to time by the detailed working reports as they come in?

9293 Mr. Simpson: They are.

The Master: You have a complete set of charts of the entire city?

Mr. Simpson: We have a complete set of charts, sir, complete except for a portion of the streets on which subway work was done, and on which the plotting has not been completed, and a very small portion of the upper island, the upper part of the Island of Manhattan, where the mains are few and new and the necessity for these charts has not been so urgent. They are in process of completion but not yet completed.

Mr. Ransom: The mains were originally shown
9294 simply as Consolidated mains on the insurance map, and then the Company started in to make up these mains. Then at the present time that work has not yet been completed for the upper part of Washington Heights, so that as to the upper part of Washington Heights we have the insurance maps which show, so far as the Consolidated mains are concerned, the same information which is shown by the maps now used by the Street Department.

The Master: Is there any other schedule of mains and streets we want to inquire into while Mr. Simpson is here, because I take it you will not know any-

thing about apparatus at the 21st street station, or 9295
anything of that sort?

Mr. Simpson: Not much, sir.

Mr. Ransom: The service records are kept in substantially the same way, so far as the books are concerned.

The Master: Are you on services, Mr. Simpson?

Mr. Ransom: That is, there are no maps on services except there are houses.

The Master: Suppose you let me find out what there is.

Mr. O'Brien: Mr. Master, is this going to be an informal proceeding?

The Master: Yes, it is for the purpose of satisfy- 9296
ing myself as to whether details ought to be supplied.

Mr. O'Brien: It is understood that the witnesses are not under oath and that counsel is just having an informal discussion with you?

The Master: Yes. The Master is looking into it in aid of the Court, in order to determine whether further information ought to be supplied by the complainant or whether counsel should not be required to get any further information they want direct from the records here. I might add that if the records in other respects and as to other items, are as complete as they seem to be as to mains, I shall advise Judge Mayer that no further informa- 9297
tion is required in the nature of a bill. It would be——

Mr. O'Brien: Of course, you will hear us on that before you come to some conclusion?

The Master: I do not know that you can say much about mains.

Mr. O'Brien: I have not reached that conclusion yet.

The Master: Let us get services. There is an item here 67,985 services, valves, valve boxes, frost pro-

9298 tection, coverings and coatings. Where does that come from?

Mr. Simpson: That comes from our book which I hand you, sir (handing to Master). It is entitled "Report operation, mains and services, public lands, Consolidated Gas Company," and on the date taken on the page headed "December, 1919", total number of services is 67,985, sub-divided into the various sizes and the operations on those services given here.

The Master: What is there on the other side here of mains? Is that a duplication?

Mr. Simpson: That is a duplication of the other.

9299 It is miscellaneous information in that book.

The Master: And that tallies with the mains book that you showed me before?

Mr. Simpson: It does, sir.

The Master: Then under that on the last side of the book, are various items as follows: "Services laid during December, 91; services taken up during December, 114; increase or decrease during December, 23; services in ground January 1, 1918, 68,440; decrease to December 31, 1918, 455; services in ground December 31, 1918, 67,985." Now, on the right hand side you have a form for public lamps.

Mr. Simpson: We have no public lamps.

9300 The Master: Apparently you are not using that any more. You have a form, "Services December, 1918,"—in the ground is it?

Mr. Simpson: Yes.

The Master: ½ inch, 27; ¾ inch, 466, and so on through, carrying the total of all of 68,008. Then you have Laid 10—1½ inch; 29—2 inch; 8—3 inch; 1—6 inch, making 48. Relaid: 13—1½'s; 24—2's; 1—3, making 38. Gained by transfer: 1—1½; 4—1½, making a total of 5, makes a total of 68,099. Then cut-off: 5—¾'s; 3—1 inch; 61—1¼ inch; 31—1½ inch; 13—2 inch; 2—4 inch, making a total

of 114. Lost by transfer: None. That brings your 9301
balance to 67,985?

Mr. Simpson: Yes, sir.

The Master: Where are the details of the particular items making up the service equipment?

Mr. Simpson: The details of the services as laid are contained on the right hand side of these reports that I have just handed to you, sir. Here is one of them (handing to Master). It does not cover that current month that you have here.

The Master: On the right hand side of the report which I had before is a form "Services for Consumers", giving the items very much as I have read them off, and then "Remarks" below, "Services cut 9302
off", and so on, with summaries, but it does not say where, does it?

Mr. Simpson: No, sir.

The Master: Where can counsel get the information as to particular premises, where they were laid, relaid or cut off?

Mr. Simpson: Those particular services?

The Master: Yes.

Mr. Simpson: From our labor ticket for the job, in so far as those exist and so far back as those exist.

The Master: How far back do they exist?

Mr. Simpson: Seven years. One year beyond 9303
the——

The Master: I take it that you did not deem it necessary to have for your information a statement or record as to where the various services were installed or cut off?

Mr. Simpson: No, not for that purpose, but——

The Master: You keep another record, do you?

Mr. Simpson: In our files we have a card, a geographical card file that shows the services by card and the company.

9304 Mr. O'Brien: When were they made, Mr. Simpson?

Mr. Simpson: Those records were made—well, long before I came with the company.

The Master: Started, you mean?

Mr. Simpson: Yes.

Mr. O'Brien: You do not know that they were made at the time when the services were put in?

Mr. Simpson: No, I do not.

The Master: Since you came here are not these cards kept up when changes are made from time to time?

Mr. Simpson: Yes, sir.

9305 The Master: Then they are made when the report comes in and the services are installed?

Mr. Simpson: Yes, sir.

Mr. O'Brien: Just a minute now, if this man is a witness we want him to be a witness. If you are going to stand there and post him, of course this is not a legal hearing, I object to it, your Honor. If we are going to have the witness' testimony taken we want his statement and not Judge Ransom's. This is too important to rush through.

The Master: Mr. Simpson, this is a card system showing the installation of services, or the discontinuance of services, or simply installation of services?

9306 Mr. Simpson: It shows the fact that such services, of such a size, are in that building—such size and such ownership. It is corrected from time to time.

The Master: Take the first card that you show me as headed "10 East 68th Street".

Mr. Simpson: Yes, sir.

The Master: That means that there is a service there?

Mr. Simpson: Not necessarily, unless under your

inch and a half there is a figure "1" to show there 9307
is one inch and a half service.

The Master: Are they the same blank cards?

Mr. Simpson: Possibly they would be.

The Master: On the first column it says "Co."?

Mr. Simpson: Yes.

The Master: Does that mean Consolidated?

Mr. Simpson: Consolidated?

The Master: Do you keep the records of the other companies here, too?

Mr. Simpson: We keep the number of services in the building, irrespective of whether they may be Consolidated or other companies'.

The Master: You keep a record of all services in 9308
every building.

Mr. Simpson: All services in every building.

The Master: Practically every building on Manhattan Island?

Mr. Simpson: We have to know that in case of a gas leak. We have to know what is in the building.

The Master: This card shows that it is a Consolidated service, one and a half inch.

Mr. Simpson: Yes, sir.

The Master: Connected with the six inch main or is it a six-inch service main from the street main?

Mr. Simpson: No, it is a six inch main. 9309

The Master: Is that a service main or street main?

Mr. Simpson: No, that is a service main. That says "Main".

The Master: In the sidewalk it says. What is this in the sidewalk; what does that say? Valve location in sidewalk?

Mr. Simpson: This is the valve location here, sir (indicating), valve in the roadway, and this is a note to the effect that the service was relaid on 10/6/15.

9310 The Master: Under that, what is that "A. H. P."?

Mr. Simpson: That is the initial of the man that made that card.

The Master: Sometimes are they relaid in the sidewalk?

Mr. Simpson: Yes, and when that portion of the service was—not in all cases, no, only as the cards are so corrected. If the card is made out for a building twenty years ago and there is no change there we would have no means of obtaining any further information than is on that card.

The Master: You have changed your type of card, have you?

9311 Mr. Simpson: Yes.

The Master: The new type of card calls for the following information: The first item is company, Consolidated, size of service, 2 inch, size of main, 6 inch, size of capping, 2 inch, location of service 6 feet west of the east side of the building, location of valve, sidewalk; location of leads, north; street surface, yes; solid ground, yes; grade to main, yes, 6 inch main 4 feet south of north curb.

Mr. Simpson: In all cases that C means curb.

The Master: This is dated 9, 20, 18, what does that mean?

Mr. Simpson: The date when the card was made

9312 out.

The Master: Where do you get the information to make that card?

Mr. Simpson: The information was obtained from the work ticket, a ticket made out on the work.

Mr. Hayward: He says this C on the cards means curb, and on these statements we had before, he said it meant corner.

Mr. Simpson: I did not. The Master said it meant corner, it means curb; I was not able to make the correction in time.

Mr. Hayward: But they mean the same thing in 9313
both?

Mr. Simpson: They mean the same thing in both, yes, sir.

The Master: Anything else? Mr. O'Brien, do you want to ask anything?

Mr. O'Brien: I think the witness better go ahead and finish. I do not care to take this up and try to push it through in a couple of minutes. It is too important.

The Master: You understand this is simply for the purpose of my determination as to whether you are to get a further bill.

Mr. O'Brien: But your Honor certainly wants to 9314
get the benefit of cross-examination of the witness.

The Master: I am asking you whether you want to ask him any questions.

Mr. Chambers: He is not a witness, he has not been sworn.

Mr. O'Brien: Mr. Simpson, did you have anything to do with this inventory?

Mr. Ransom: I object to going into these matters.

The Master: I don't care anything about that. All I want you to find out is whether there is any other information.

Mr. O'Brien: I will ask the question and your 9315
Honor can rule on it, if you want to. Did you prepare the inventory, so far as it affects the department of which you are the head?

The Master: The Master states that he does not care for an answer.

Mr. O'Brien: I will note an exception. Did you make the tabulation of 76,985 services?

Mr. Ransom: He is not offered at this time as a witness.

The Master: I don't want that answer.

Mr. OBrien: The point that I assume we are

9316 trying to find out here is whether or not—why they can't furnish us with the details we want. What I am trying to find out——

The Master: That is not so. It is quite apparent they can give you all that detail, but it will take a year to get it, and the point is whether you ought not to come and get it direct from the books.

Mr. O'Brien: And to do that, I presume it will take the defendants three or four times as long as it will them.

The Master: No, there is no necessity for that. These records apparently are kept in the usual course of business and show certain information,
9317 and all that your engineers want to do is to check it up to a reasonable degree and find out whether their records are properly kept, and if so, as Judge Mayer indicated, you are to assume that those records are properly kept.

Mr. O'Brien: Well, the important thing here is the age of these mains, and there is a lot of information about the services that does not seem to be on these cards.

The Master: All right; then they cannot give it to you.

Mr. O'Brien: Before we go into that, I want to ask the witness, or Mr. Simpson, not yet a witness,
9318 whether or not in making up the tabulation, they did not have the total, say, for years, out of which, this total—this grand total of 67,985 services was arrived at.

The Master: Can't you see that they took that figure right from this land book? That is all they had to do for that purpose.

Mr. O'Brien: I dont know that.

The Master: Well I do.

Mr. Goetz: The total of these figures is in this book.

The Master: I can see just what they did, they 9319
just took their ultimate figures, that is why I followed that book up, to see how they accumulated.

Mr. Hayward: Does the card show when the service was installed in each case?

Mr. Simpson: Not in every case. It may in some cases.

Mr. Hayward: But it was not the uniform practice to have the card show the date of instalment?

Mr. Simpson: No.

Mr. Chambers: Haven't you got somewhere in your archives or some tabulations in regard to mains, all the weights of the pipe, where located, the street and when laid, and whether new or old? 9320

Mr. Simpson: No, I have not.

Mr. Chambers: Isn't there an inventory?

Mr. Ransom. I object to the question.

The Master: Let him answer. If this company has a complete inventory, I am going to report and suggest that counsel should have it.

Mr. Chambers: Isn't there a more complete inventory than this?

Mr. Simpson: I don't know what inventory the company may have. That is my honest answer to that question.

Mr. O'Brien: Do you know what inventory they may have of the properties that are under your con- 9321
trol, or your jurisdiction?

Mr. Simpson: What they may have, no. What may be in the accounting department I don't know.

Mr. O'Brien: You don't know. Have you ever seen one?

Mr. Simpson: I have not.

Mr. O'Brien: Have you ever prepared a complete inventory of the property that is under your jurisdiction?

Mr. Simpson: I have for this purpose.

9322 Mr. O'Brien: I ask you a question without any restrictions.

Mr. Hayward: He has for this purpose, he said.

Mr. O'Brien: For this purpose, you mean what, for the purpose of the present inventory?

Mr. Simpson: I do.

The Master: What do you mean, the inventory, this schedule?

Mr. Simpson: Yes, that schedule.

The Master: You call this an inventory?

Mr. Simpson: Well, the characterization may be wrong.

The Master: I am not criticizing it. I want to
9323 make sure you do not mean something else.

Mr. O'Brien: Is that in your office?

Mr. Ransom: I object to that.

Mr. O'Brien. Who has that, is that in your office?

Mr. Ransom: I object to going into that.

The Master: If there is any other statement of property prepared other than this, let us find out about it.

Mr. Ransom: Any document we have they have full access to it.

Mr. O'Brien: I object to Judge Ransom's giving the witness' answer. I want the witness' answer and I will get it. I take it, Mr. Simpson, from what you have said,——

9324 The Master: One minute. I will get at that. Mr. Simpson, from what you said I take it that you prepared the figures, we will say, for page 146, did you, showing the total amount of various pipe?

Mr. Simpson: I prepared some figures for that page, sir, yes.

Mr. Chambers: Where did you get the reproduction cost?

Mr. Ransom: We object to going into that at this time.

The Master: I am going to find out.

Mr. Simpson: That reproduction cost is my best 9325
judgment, based on my experience in main laying, and my knowledge of costs.

The Master: It is not from records, from any tabulation of records that you got it? Have you got a detailed inventory of your pipe and the size?

Mr. Simpson: No, sir, I have not.

The Master: Well, you figured $30,000,000 as the reproduction cost, and that is the total amount of pipe shown on this page?

Mr. Simpson: Yes.

The Master: And the amount of labor it would take, in your judgment, to lay it?

Mr. Simpson: Yes, labor and material and other 9326
items taken, in my judgment, to lay that pipe.

The Master: In order to reach that conclusion, you have made some calculations and memorandum?

Mr. Simpson: Yes, sir, I have made calculations and private memorandum.

The Master: Did you prepare an inventory showing and furnish to the company an inventory showing so many feet of mains, so much per foot, amounting to so much, carrying that down in tabulated form?

Mr. Simpson: I did not. I furnished the company my figures for the reproduction cost. 9327

The Master: $30,000,000.

Mr. Simpson: Yes.

Mr. Chambers: But you gave them no details?

Mr. Simpson: No.

Mr. Chambers: You have that, haven't you?

Mr. Simpson: I have that in private memoranda.

Mr. Chambers: I see. And does that show the original cost too?

Mr. Simpson: In a measure, too, that is true of the original cost.

Mr. Chambers: It took you some time, though,

9328 to dig out that reproduction cost and get up your private memoranda?

Mr. Simpson: Yes, it does take time to make a record of that sort.

The Master: The answer to it is that when Mr. Simpson has spread his figures on the record, I am going to give you a chance to analyze them, that is all.

Mr. Chambers: If he would give us his——

The Master: If the company is not willing to give a statement of that kind now, I don't know that the Court can compel them to. I think it will save time.

Mr. O'Brien: May I ask a few question of this
9329 witness? Where did you get—you have here the original cost actual or estimated?

Mr. Simpson: Yes.

Mr. O'Brien: Will you state the sources from which you got the actual original cost?

Mr. Simpson: I will.

Mr. O'Brien: What are they?

Mr. Simpson: Part of that comes—for a part of the period is obtained from the books of the company showing the actual expenditures for mains laid and the deductions for mains withdrawn from service. The balance is my best judgment, based on my knowledge of main laying, the history of
9330 main laying over a long period in the city, the obstructions met with and various other factors as to reproduction cost of the balance.

Mr. O'Brien: I was talking about the original cost.

Mr. Simpson: Of the original cost?

The Master: At the time of the consolidation these mains and services and other property were capitalized at something like $30,000,000.

Mr. Simpson: Well, I don't know anything about that.

The Master: Now, those mains and services, you 9331
estimated their orginal cost, did you?

Mr. Simpson: I did.

The Master: Beginning with 1885 do the company records show the actual cost?

Mr. Simpson: I did not attempt to determine whether they did or not.

The Master: How far back did you go in taking actual figures of cost?

Mr. Simpson: Back to and including 1906.

The Master: As to actual figures of cost?

Mr. Simpson: Yes.

The Master: Well then, am I correct in my assumption that you started out with the Master's 9332
figures of findings in 1905?

Mr. Simpson: I would not say so, sir, no.

The Master: How did you get your figures prior to 1906?

Mr. Simpson: Prior to 1906, as I have just stated.

The Master: Didn't you have any records of the company to help you at all except the amount of pipe?

Mr. Simpson: I had a great many memoranda of various sorts as to costs, but those memoranda are not records of the company, they are miscellaneous memoranda as to costs, as to the cost of various types of mains laid under various conditions, in 9333
various years, and those we are able to supply.

The Master: I think that is a matter, when he is called as a witness, that you might very well take up.

Mr. O'Brien: Will you turn over your papers from which you get this total of $2,044,047.68 for original costs, actual or estimated?

Mr. Ransom: The complainant will not do that.

Mr. O'Brien: Well, if you have that list showing the sources of your information and where you es-

9334 timated the original cost, the basis of your judgment——

Mr. Ransom: I object to the interrogation of Mr. Simpson as a witness at this time. The books are here.

Mr. O'Brien: Your Honor, the purpose is to find out whether they can readily give us and supply this information without great trouble. Now, if that is already gotten together, as the witness says he has made his memoranda from various sources, there is proven the availability of these records, it is shown they can turn over to us at least that much.

Mr. Ransom: Why should we disclose to you our
9335 case?

Mr. Hayward: Is this long list of the different dimensions of pipe that is found on page 146, that total at the foot of that and in fact all the totals—they are simply the 1906 figures with the additions and the subtractions, are they not?

Mr. Simpson: You mean in the lengths of pipe?

Mr. Hayward. All the pipe and all the details.

Mr. Simpson: It could not be anything else. These records run right back.

Mr. Hayward: You did not go back of 1906, you took the cost figures of 1906?

Mr. Simpson: As to the length of pipe?

Mr. Hayward: As to the amount of pipe and the
9336 details of value.

Mr. Simpson: I did not.

The Master: You would want to subdivide that. As I understand it, this page 146 showing the length of various kinds of pipes, was taken from that book that you showed me?

Mr. Simpson: It was, sir.

The Master: That is the total carried into the last book, isn't it, December, 1918?

Mr. Simpson: It is.

The Master: It is simply carried over into this 9337
sheet?

Mr. Simpson: Yes.

Mr. Ransom: Going back to 1884 as to quantities of pipe?

The Master: Yes, it goes all the way back.

Mr. Hayward: How far did he go back as to cost?

The Master: The next point is that he says that back to 1906 he took actual cost of his pipe. Back of that he estimated the cost.

Mr. Simpson: Yes, sir.

The Master: On reproduction cost you used a basis of calculation which you will testify to if called as a witness? 9338

Mr. Simpson: Yes.

The Master: That is your opinion as to what in your judgment it would cost to reproduce?

Mr. Simpson: Yes, sir.

The Master: And the estimated cost back of 1906 is your opinion as to what it probably cost the company?

Mr. Simpson: It is.

Mr. Hayward: And the estimated costs in your opinion back of 1906 happen to coincide exactly with the figures shown in the 1906 law suit?

Mr. Simpson: Not necessarily.

Mr. Hayward: But they do, as a matter of fact, 9339
don't they?

Mr. Simpson: I don't know whether they do or not.

Mr. Chambers: How long did it take you, Mr. Simpson, to get up that reproduction cost?

Mr. Simpson: Several days—several days and several nights.

Mr. O'Brien: Mr. Simpson, will you state now the sources, with some particularity, the sources of your information as to the original cost of mains and service prior to 1906?

9340 Mr. Ransom: I don't think he should be required to give that at this time. The inquiry, as I understood it, was as to what sources of information are available to the defendants here. We have shown year by year, running back to the inventory as of November 11th, just what the records are, and what —the kind of pipe and sizes and lengths and mains laid, running back to 1884, and that is just as available to you as it is to us.

Mr. O'Brien: I press the question, your Honor. We are getting to the crux of this matter, and we have asked for information where to find the original sources, specifying the books, the original
9341 sources of information as to the properties themselves, and as to the original cost. He says he has gathered them together, and he has it in his private papers, and I think it should be turned over to us. This is not something that can await cross-examination of the witness Simpson. For ought we know, he may never be put on the stand.

Mr. Ransom: Here is a young man who grew up with this company for many years, his father was superintendent of these mains for many years, this man worked with his father for many years——

Mr. Hayward: This is not a geneological exhibit.

The Master: The question is as to whether he
9342 shall produce them just now.

Mr. Hayward: We don't care about the geneology.

The Master: The question before me now is as to whether Mr. Simpson shall state the basis and sources of his information. After I have gotten that, then the question will come up as to whether those sources are available to these defendants, and whether they must be made available to them. I will ask you, Mr. Simpson——

Mr. O'Brien: Will you swear the witness formally, so we can go into that?

The Master: No, I won't swear the witness for- 9343
mally. I will ask you, Mr. Simpson, what sources of information you had? You need not tell me as to what your information was, but where you got the information on which you based the estimated costs prior to 1906.

Mr. Simpson: Well, I have the cost of various pipes of mains laid under various conditions, the costs to us, in some cases lacking some items, some cases they are lacking more items.

The Master: Where are they, in the company records?

Mr. Simpson: No, they are not in company records. They are in private engineering records 9344
kept in my office, records that are kept for the information of the general superintendent so that he may estimate costs.

The Master: How can they be differentiated from Company records?

Mr. Simpson: For the reason that the Company makes no use of them.

Mr. Chambers: Simpson is an employee of the Company.

The Master. Well, we know where it is.

Mr. O'Brien: It is not only a company record now, but it is going to be a public record.

The Master: We know where it is, that is all 9345
right. That was the question, where did he get his information from, and he says he has it in his office.

Mr. Simpson: I said I had some information in my office. I also have a great deal of information which is knowledge and judgment, and I cannot spread that on the record, except by talking.

Mr. Hayward: These memoranda which you say you have, which you call private, they were never placed at the disposal of the defendants in this

9346 case, or until now no one never knew anything about it?

Mr. Simpson: I don't see why they should. I would not expect to place them at the disposal of an officer of this company.

Mr. Hayward: Although you work for the company?

Mr. Simpson: I work for the company.

Mr. O'Brien: Your Honor, may I ask at this time if we are going to have the benefit of this record in the record of the case?

The Master: Yes.

Mr. O'Brien: Your Honor can see where it points.

9347 Mr. Hayward: If you left the company, you would not give that memoranda to the company?

Mr. Simpson. No, I would not.

Mr. Hayward: What do you mean, they belong to you, and not to the company?

Mr. Simpson: I would turn them over to my successor in the Street Department.

Mr. Hayward: Wouldn't he be a member of the Company? Aren't you a member of the company?

The Master: You need not go any further on that.

Mr. Ransom: It is perfectly obvious what they are.

9348 Mr. Hayward: I don't see that it is obvious to me. He predicates this opinion on——

The Master: I think they are company records.

Mr. Ransom: This man is not an accountant, and instead of going back to the books where he might get the data, he has the records they keep in the engineering department. Now, the same data as to any work done by the company is available in the books. The fact is this man is not an accountant, so that he went to the accounting department : get data does not alter the situation.

Mr. O'Brien: Your Honor, may I make a sugges-

tion right here? In order that I may be clearly 9349
understood may I say something?

The Master: Yes.

Mr. O'Brien: There may be some talk about being an obstructionist, but I would like to put myself clearly on this record at this time as saying this, that if the company, the complainant company, has got certain records, and they know what they are, that they are going to turn over, and that there are certain other records that they absolutely will not turn over, let us have it clearly set forth where the dividing line is, and then we are ended with that end of this controversy. In other words, we will fall back on the record for the absence of frank 9350
disclosure on the part of the complainant; but the thing I would like to have made here is what they decline to show us and what they will show us, so that the record will clearly show and not leave any doubt about what has been given and made available to us, and what is not.

The Master: Let us get our information first, and then we will pass on it.

Mr. Hayward: Before we leave that, if the Master please, the Master has a clear and analytical mind, and cannot be accused of having any prejudice in this case. Now, I would like to have the Master for my benefit concede that I am stupid and 9351
thick-headed, and I am skeptical about this company having 1,246 feet of 1½ inch cast iron pipe. They say they have, and they give me this as an indication that they have. Now, I consider perhaps it is my duty professionally to protect my client by ascertaining in some simple way that that statement is accurate.

The Master: Yes.

Mr. Hayward: Now, I would like to have the Master take that one little item and see what I will have to do to satisfy myself, how long it would take

9352 me to find that one item, from what we have already had.

The Master: I think I know what you will have to do. I think you will have to go back to that book showing 1½ inch cast iron pipe installed according to the book in 1885, then you would have to take each book since.

Mr. Hayward: Each month?

The Master: Each month since, and see where additions have been made to it, if you wanted to go into that detail. You would find that from month to month there was added to it the 1½ inch pipe installed and subtracted from it the pipe taken out,
9353 and you would find in the last book to which we referred, the net balance at that time; and if I were sure that was on the level, I should first try to find out, if I could, how they determined that they had the amount of pipe on hand installed in 1885. I probably would not be able to find it.

Mr. Goetz: You would.

The Master: I would?

Mr. Goetz: Yes.

The Master: Well, so much the better. Then I would have a starting point, and then I would take a month five years later, say in 1890, and I would get the streets and mains report, and I would check
9354 it up and look at the report, and look at the work sheets, and if they tallied, I would jump along for four or five years and take some other month, and I would test it in four or five places in that way, and if it tested out I should assume the balance shown on these books kept for the company's use, were right. It would take me about an hour or two to determine that, I imagine.

Mr. Hayward: On that one item?

The Master: On that one item?

Mr. Hayward: That is what we have to do.

The Master: I would not do it myself anyway. I 9355
would have an engineer do it.

Mr. Ransom: Mr. Hine and Mr. Simpson can set out on these things and work them out in a short time.

Mr. Maltbie: Judge Ransom makes a statement that we can set out to check the things we have on this schedule or this inventory, which is inadequate, and he says we can work it out in a short time.

The Master: I know you can do it in a short time.

Mr. O'Brien: Your Honor's idea of time, when you thought an hour a minute ago, is on a twisted perspective, with all due respect to you.

Mr. Maltbie: We can't price, no man can price 9356
fairly from the information given on that sheet, and get the figures at the bottom of the pages on their basis. He has got to have more information than is on that sheet and Mr. Simpson has it. I say that, not because I have seen it, but because I know he can't thoroughly price it without having that information.

The Master: Let me interrupt you, Mr. Maltbie. You can check up from the records of the company, as I have indicated, satisfactorily, the amount of pipe on hand with some reasonable degree of certainty. That is one item. Then you will come to the question——

9357

Mr. Maltbie: That is just one item.

The Master: Yes. That will take as much time as the engineers in charge are quick in their work or have adequate assistance or depending more or less on how much they want to take for granted. There must be some basis on which you must take something for granted on a big job.

Mr. Hayward. No doubt about that.

The Master: Then you come to the question of values.

Mr. Maltbie: Before you come to that, when you

9358 have got just the length of pipe you have got only the first item.

The Master: Then the next item is——

Mr. Maltbie: The depth below the surface of the ground, the amount of rock encountered in laying that main, the weight of the pipe, the number of fittings that are used, the amount of paving which was actually replaced when they put down the main. Now, the decision on that point is certainly clear, that they are entitled to what they paid for and no more. Now, no man can make up a figure, the figure here at the bottom without having those items and perhaps others for each one of the size of the
9359 mains laid there. Now, if Mr. Simpson has this and the company has it, and they cannot have an engineer price this fairly without that, why isn't it fair to ask them to give us the information which they have for these different items right through to the extent that they put a price on the item, that is, carrying it just as far down as they price the item and just as much detail, if they priced it after the amount of lead used in the caulking of the pipes, give us that, or lead wool, whatever they may use, but give us what they have got, and then let us take that and without going back and reconstructing out of their books the information which they themselves have got, without putting us to the expense
9360 and taking the time of reconstructing all of the information which they have got, why don't they give us that information like many other companies have done in other cases, and then let us check it up and see how much there is of it that we can agree upon. There ought to be a lot of it that we cannot agree upon.

Mr. Hayward: Look at these items at the bottom here, "Valves, valve boxes, railway crossings, river crossings, paving, &c."

Mr. Maltbie: No man can price the amount in there for river crossings from those two words.

Mr. Ransom: It is utterly impossible, no one 9361
ever made out any such inventory in any case as Mr. Maltbie has referred to.

Mr. Maltbie: That is not so. If you will give me that volume (indicating)?

Mr. Ransom: It is utterly impossible.

The Master: That will get us nowhere, saying it has never been done. Lots of things have been done that we don't know about.

Mr. Ransom: There is no way possible of going into all the main systems of this company, part of them laid before 1884, part of it since, and showing as to each piece of main what rock conditions were encountered at the time, just how many pieces of 9362
fittings were used in each. All the information we have got is at their disposal.

Mr. O'Brien. Don't reiterate that, Judge.

The Master: Mr. O'Brien——

Mr. O'Brien: Well, let us make a note of that. Counsel just said, any information——

The Master: I know all about that.

Mr. Maltbie: May I clear that point up in a measure? If they haven't got the information, if their records do not show the amount of rock excavation that was removed, why, of course, we don't want it. We ask for what they have got.

The Master: I will find out what they have got. You have heard Mr. Maltbie's contention, Mr. Simp- 9363
son, as to the information or facts. What have you to say about it? Why can't they find out somewhere whether—how much valves were used, and how much valve boxes, and what railroad crossings and river crossings, and what paving you have, and what "etc." you had. Have you got any record showing that?

Mr. Simpson: We have records. We have, for instance, on the valve boxes, those have gone into the job as a part of the job. We haven't any plan or

9364 any record that shows on a certain main there is a certain type of valve box, or anything of that sort.

The Master: How about the conditions you met in excavating. Does your report show that?

Mr. Simpson: The conditions we met in excavating are not shown on the report.

The Master: Haven't you any record in the department, in this company?

Mr. Simpson: We have some records of conditions met on mains laid in latter years.

Mr. Ransom: May Mr. Carter say something about that?

The Master: I want to get Mr. Simpson first. He
9365 is the engineer on mains, and I would like to know what he says about it. What does "et cetera" mean here? Something that you haven't brought out, and you want to be sure that you have covered it?

Mr. Simpson: It might mean a thing like this, a special cast iron box built to clear an obstruction, which we have figured in at our allowance for "Specials" on the job.

The Master: On what basis do you figure that; have you got any basis at all?

Mr. Simpson: Yes, we have our judgment on the job.

The Master: Just judgment?

Mr. Simpson: Specials.

9366 Mr. Ransom: Is it percentage or what?

Mr. Simpson: It is percentage.

The Master: What I am trying to get at is this, Mr. Simpson. The defendants are handed here a statement that you have got a lot of pipe, that you have laid with valves and paving and other things, and you say the original cost, estimated or actual, is sixteen million dollars, and you figure reproduction cost thirty million dollars.

Mr. Simpson: Yes, sir.

The Master: Then you are called as a witness,

you are to be closely interrogated as to how you ar- 9367
rived at these figures, you are to be asked how much paving was displaced, what kind of earth you had, how much time it took, and all the rest of it. That is all going to take a great deal of time, and the purpose of this hearing is to see if we cannot save that time by furnishing the defendants with that information, so that they can check in advance of your testimony.

Mr. Ransom: I will state the basis of our——

The Master. Aren't there records of your company, either in the company's files or in the engineering office files, showing in some form the conditions met in the laying of the various mains on 9368
various streets?

Mr. Simpson: There are no complete records of that sort.

The Master: Well, are there incomplete records?

Mr. Simpson: Very incomplete.

The Master: Where are they?

Mr. Simpson: In my office, some of them.

The Master: Well, what kind of records are they?

Mr. Simpson: In some cases they are card records detailing the cost of various items; in some cases they are old books, kept by engineers on the jobs. None of these records are complete.

The Master: When you lay a main somewhere, 9369
don't you get a report as to the conditions met in the laying of that main, as to why it cost so much to lay that main and why it took so much labor and so much time, and why you put in certain things and what you did?

Mr. Simpson: There is a report made to the accounting department giving the items of expense so far as the street department is concerned. There are other expenses that may be added to

9370 that main on bills rendered against the company, and not of knowledge to the street department.

Mr. O'Brien: How far back have you preserved the work tickets on mains?

Mr. Simpson: Back for about seven years.

Mr. O'Brien: From this date, Mr. Simpson?

Mr. Simpson: Yes.

Mr. O'Brien: And they are not available for any time prior to that?

Mr. Simpson: They are not available prior to that.

Mr. O'Brien: Would the same thing be said as to services?

9371 Mr. Simpson: Yes.

The Master: Mr. Maltbie, doesn't it come down to this that when witnesses testify to this estimated or actual cost, and counsel have cross-examined him as to the various bases of information and the sources from which they come, that you and your engineers and associates may find it necessary to ask for an adjournment for the purpose of analyzing and examining into those figures?

Mr. Maltbie: Your Honor, it may be gotten that way, but what does that mean? If they furnish a list like that page, referring now to apparatus here, I haven't got the mains, if they furnish a list

9372 of such things as that——

The Master: Is there a schedule here of apparatus?

Mr. Maltbie: Well, in a way. It furnishes boilers and acessories as one part of the apparatus. Now, if they would furnish us a list of this sort, there are two things necessary; one is a list of the property, and the conditions, such as they have assumed, of the trench, if they don't know it absolutely, the width of the trench and the price. If they give us a list of the property, the probability is that nine-tenths of that will not be controverted,

but we have got to have it in order to know what 9373
parts of it we do not agree with, and we have got to look it over to know what parts we disagree with. We may not disagree with the fact that there is a certain amount of property there, but the question is whether it may be used and usable. If they want to put the amount in on any one of their bases, it may be that for a considerable amount of the property, the estimated or the actual cost of it can be agreed upon, but if we are put in this position, that we do not have this, that all they give us for the moment is what you have before you, and a man is put on the stand to testify as to the existence of that property and the original 9374
cost and reproduction cost, and you begin to find out in order to find out what he has valued and how he has appraised it, and the prices he has put on, and whether they are reasonable or not, you have practically got to go through these items and ask him for that information, and the Lord knows how long it will take to do it that way. I have seen it started that way, but never ended that way, because it gets into a situation where it would consume an endless amount of time. We have no opportunity to decide before cross-examination what items we challenge and what items we do not challenge, and we have got to go through with 9375
every one. If they can give us an inventory—they have made some amusing references to the picture book; let them leave out the photographs; give us a typewritten list of the inventory, so we can go through it.

Mr. Hayward: We will O. K. three-quarters of it.

Mr. Maltbie: Yes, I think even more, and the amount of time it will save cannot be estimated.

Mr. Ransom: Several months ago we gave them a list of mains along covering 112 pages. Will they say how much of that they agree to?

9376 Mr. Maltbie: That is not an inventory. It is a list of the expenditures which you made from 1905 on, without the details as to the size of the main or the quality of the pipe that was used or the character of the pipe used, the depth below the surface, or any of those things.

Mr. Ransom: Is it not true that every voucher of those 112 pages has been checked by some representative of the defendants?

Mr. Maltbie: I could not say that.

Mr. Ransom: The vouchers on every item on these 112 pages with respect to mains alone have been produced, and to the best of our knowledge,
9377 at least, they have been checked.

Mr. Clark: As to the accuracy of the accounting. That does not affect the proper value of it.

Mr. Ransom: Will they tell what they will do with respect to those items?

Mr. Chambers: Why don't they want to give us what we want? It will save us money; it will save them time.

Mr. Ransom: We haven't got it.

Mr. Chambers: Now, we can tell them A, B, C what we want. We don't ask you to give us anything that you haven't got. To sum it all up, we will tell them what we want, and why don't they give
9378 it to us?

The Master: I would like to hear what Mr. Carter has to say on this. You have heard this discussion, Mr. Carter. What have you to say about it?

Mr. Carter: This, your Honor: Having been with the company from the time of consolidation, and for several years before, I am more or less familiar with the records relating to the mains. No information came to the Consolidated Company at that time indicating with any definiteness the depths of these mains, the distance from the curb, or any other information that would enable us to go into

the street and put our hand on the spot under which 9379
a main of a given size was installed. In inventorying these mains, we would have to pursue the same plan that any other engineer would have to do who was competent to value a main system. That is made up by a man that probably knows no more about the mains in that city than Mr. Maltbie knows about the mains in this city, and he goes on and appraises them on such information as the company gave him. I don't believe he had at his disposition the amount of information that we have given to these defendants in respect to these mains.

The Master: Say, take in 1905, the company instals a main on 125th Street. Have you a record 9380
which shows the character of excavation, whether it was rock or earth, or how deep the excavation was, the character of the pavement that you had to displace, the character of the pavement that you had to put back, and the actual cost of the construction of that main?

Mr. Carter: Not all in one place.

The Master: Have you it in various places?

Mr. Carter: The main account in the operating ledger would indicate the cost of the main. That would be made up of the material and labor that entered into it.

The Master: Would it indicate the character of 9381
the excavation?

Mr. Carter: It would not.

The Master: Is there a record somewhere else that indicates that?

Mr. Carter: The work ticket of the department would no doubt indicate the extent to which rock excavation was necessary.

The Master: Would it show the character of pavement displaced?

Mr. Carter: It would, and the cost of replacing

9382 the pavement would be a matter of record in the main account.

The Master: Would it show the character of pavement replaced?

Mr. Carter: It would.

The Master: If it was Belgian block pavement taken away, it would not necessarily follow that Belgian block was put back.

Mr. Carter: It would if the street was a Belgian block street, the same pavement would be restored. I guess in almost every case it would be installed by the contractor, or when the City was doing it it would be paved by the City. A great deal of the 9383 repaving has been done by the City and charged against us.

The Master: So your books would simply show a charge against you for relaying pavement?

Mr. Carter: That is so. That would be charged against the main account, and from 1905 on, it would contain that information.

The Master: Then your record would not show what kind of pavement it was if the City replaced it?

Mr. Carter: Yes, the City's bill would show that.

The Master: These tickets are on file, these vouchers?

9384 Mr. Carter: Yes, sir, all of them, and have all been examined by the defendant. Thousands of these bills have been furnished to them. They have more information on which to determine the value of our mains than ever was furnished to any engineer.

The Master: Judge Ransom calls my attention to Street Main Record No. 7 which, apparently, has on the right hand side of the book a form calling for lineal feet laid in rock. This particular page I am looking at says fifty feet. I see it is the

same on the other side of the page, too. That is 9385
what is called a cost record book.

Mr. Carter: It is the book which records every main project, the cost of which appears in our operating ledger charged against mains. Each project is given a number.

The Master: That is other than and different from the books I have seen before.

Mr. Carter: This is the Accounting Department record, it is not the Street Department record. The defendants have had this, and have been using these books for two months.

Mr. Ransom: You see there are the records of the Accounting Department, which are made up in 9386
part from data that does not come from the Street Department. This is the Accounting Department record, which affords a check against the Street Department record which your Honor has seen before.

Mr. O'Brien: Will you tell me, Mr. Carter, speaking of the main system prior to 1906, what records are there that would be turned over and available to the defendants? Have you your main books running back from year to year?

Mr. Carter: Yes, sir, prior to 1906, they run back to 1884.

Mr. O'Brien: And they carry a list of mains from 9387
year to year, and the grand total from year to year?

Mr. Carter: Yes, sir.

The Master: Does this cost book run back to 1885, too?

Mr. Carter: No, I don't think that book runs back that we are able to locate, over twenty years.

Mr. O'Brien: Then besides that, Mr. Carter, what have you got? The weekly and monthly reports?

Mr. Carter: The weekly and monthly reports which are tabulated and appear in that main rec-

9388 ord indicating mains laid, mains abandoned, or mains taken up.

Mr. O'Brien: And you have those all preserved back to 1884?

Mr. Carter: Yes, sir.

The Master: I want to spread on the record the character of the book that I now have in my hand. It is a book that apparently runs from 1913 to 1915. I will take page 500. Page 500 is as follows:

Location, south side of Bleecker Street, six feet three inches east of the west curb to thirty-three feet seven inches of the west curb on Broadway. Size laid, 6 inches; W. I.; original or to replace
9389 6-inch C. I.; size replaced (blank); when laid (blank); commenced, October 3, 1914; completed —in lead pencil—"Not completed". Total of lineal feet laid, 13 feet; lineal feet laid in rock (blank). Then under that in blue lead pencil "November, 1914"; total cost, labor (blank); material, (blank); below that in ruled columns appears the following:

Labor, payroll of—year, month, day, amount. The only entries are labor, and in lead pencil, under the month, labor by contractor. Then appears the following ruled spaces; material; date, 1914; description; amount. Under the date appears Oct.; under description P and S, which Mr. Carter
9390 says means pipe and specials; amount $45.18; December P and S, J. E. P. 481, in red, $11.73, and under that in lead pencil $33.45, which seems to be the difference between the charge in October of $45.18 and the credit in December of $11.73.

Now, page 471 of this same book, where it calls for information as to the lineal feet laid in rock, states 4 feet. In looking through it, I noticed another page where it gave the amount laid in rock. Here is one on page 609. I remember another one where it said fifty feet of rock. In most of these entries the date of completion appears, as well as

the date when the work was commenced. In some 9391
of these pages under the head of Material or Items of Cartage, Commissioner of Public Works, and matters of that kind.

Mr. Carter: That means inspectors.

Mr. O'Brien: Who kept that book, Mr. Carter?

Mr. Carter: It has been kept by a clerk.

Mr. O'Brien: By the same man right along for a number of years?

Mr. Carter: No.

Mr. O'Brien: Who has had it for the last five years?

Mr. Carter: I don't know.

Mr. O'Brien: Do you recognize the handwriting? 9392

Mr. Carter: No, I do not.

The Master: On page 479 I find lineal feet laid in rock, 40 feet. The total amount of pipe laid on that particular page was 530 feet 6 inches. The one I saw before on fifty feet laid in rock is page 463, the total amount of pipe being 232 feet 9 inches.

Mr. Bemis: Mr. Carter, take a typical year, say in 1900 for illustration, and you report I assume the increase of capital invested that year?

Mr. Carter: Yes.

Mr. Bemis. You separate that into a certain amount of dollars under mains?

Mr. Carter: Certainly. The main net increase in 9393
the investment, the accounts would show that every year.

Mr. Bemis: Now further, will your records show the subdivision for that year, we will say 1900, of mains, the number of dollars, we will say it was $400,000 for illustration, into so many dollars for 16 inch mains, and for 8 inch mains, etcetera?

Mr. Carter: It would not.

Mr. Bemis: Is there any way in which that could be worked out from your records?

9394 Mr. Carter: I should say not; that would be my best judgment.

Mr. Bemis: How would that record be obtained? We will say you had $400,000 additions to mains in 1900. Is there any way in which that $400,000 can be traced back?

Mr. Carter: Only as you might take the increase in the mileage for that year and make an estimate.

Mr. Bemis: But that figure was reached by the accountants, was it not?

Mr. Carter: The net aggregate amount expended for mains will be plainly indicated by the account.

Mr. Bemis: But you cannot separate it by sizes?

9395 Mr. Carter: No.

Mr. Bemis: Or by jobs?

Mr. Carter. By jobs, yes, but by sizes this book indicates back to, I should think, nearly 1900. The sizes of the mains laid and the amount expended on it are shown, but they have not been grouped for any purpose.

The Master: This book is known as Street Main Record No. 7.

Mr. Ransom: Of course, we have to report a list of the mains each year under their requirements.

Mr. O'Brien: Mr. Carter, why were the work tickets not kept prior to 1912? Why have they been destroyed?

9396 Mr. Carter: I am not aware that they have been destroyed.

Mr. O'Brien: Mr. Simpson says they are not in existence.

The Master: Not Mr. Simpson.

Mr. Carter: I don't know that he said that.

Mr. O'Brien: You think he is in error, do you?

Mr. Carter: Perhaps he may be.

Mr. O'Brien: Well, who does know that?

Mr. Carter: Regarding the work tickets?

Mr. O'Brien: Yes.

Mr. Carter: Mr. Simpson. 9397

Mr. O'Brien: Well, you controvert what he says about it.

Mr. Carter: I said that I did not understand him to say they were destroyed.

The Master: I won't spend any more time on streets and mains. Let us get some other department. Who knows about this item of boilers and furnaces and accessories at the 66th street station?

Mr. Ransom: I think Mr. Carter can give any information as to the records on that.

The Master: How are these gentlemen going to check this up?

Mr. Carter: This refers to three Babcock and 9398
Willcox boilers, et cetera, and two Davidson boiler feed cocks, above apparatus complete, et cetera. I should say that any engineer who knew anything about gas property and the construction of gas plants, could compute it. If he didn't know anything about gas construction, he might not be able to. I am told that any of our engineers could take that and give us an estimate of reproducing that property.

The Master: Is there any book or record anywhere which will show in more detail the size of foundations and the character of the construction, the number of valves, the amount of pipe connections accessories, and what they are? 9399

Mr. Carter: We have furnished the defendants in this case with a statement of additions to plants since 1906, in which is spread out in great detail, if my memory serves me, the cost of all construction projects at the plant, including such construction as the installation of Babcock & Wilcox boilers and accessories.

The Master: But suppose this was done prior to 1906?

9400 Mr. Carter: If it was done prior to 1906 they would have to estimate it.

The Master: You mean you have some records?

Mr. Ransom: There is one thing in that respect, the original plans and drawings of which they have examined great quantities and which we are furnishing to the experts of the Attorney General such copies as they wished.

Mr. Maltbie: Which you say are not to be taken as correct.

Mr. Ransom: Not necessarily as of to-day, but as of the time when they were built.

Mr. Maltbie: To-day is what we are talking about.

9401 Mr. Ransom: This shows just exactly what went into the foundations.

The Master: What I want to know is how they are going to check up what was there prior to 1906.

Mr. Carter: It is expected that they will inspect the properties listed in these inventories. As Mr. Maltbie has stated, they do not expect to accept these statements as correct, they expect to check them. Any information supplemental to that to enable them to make a valuation any engineer can get on the spot, making his field notes, with no trouble whatever.

The Master: What I want to get at is what

9402 records you have showing what is there.

Mr. Carter: The plants themselves. We haven't any other record than that except as the accounts indicate them.

The Master: Counsel for the defendants seem to feel that you have somewhere in your files here a book or record which shows that at the 65th Street station there are three Babcock & Wilcox boilers, each of 131 horsepower, when they were bought, how old they are, and everything else that is in that station. In other words, that you have in your files an inventory of that station.

Mr. Ransom: Here is the detail cost figures on 9403
those things.

Mr. O'Brien: Let the Master have a little to say here. You have your three per cent coming.

Mr. Carter: Let me correct the impression of the representatives of the defendants that we have any other inventory than what we have presented, for we have not. We have here the maps and drawings of these stations indicating the location of the apparatus, the dimension of the structure, the thickness of the materials, and all that sort of thing, that have been submitted to the defendants, they have had access to our map files, to our card indexes of maps——

9404

The Master: Wait a minute. Do you remember when this 65th Street station was built?

Mr. Carter: The 65th Street station was built prior to consolidation, which was in 1884, a d back of that time my memory, although I was seven years with the old New York Company, would not extend to the old plant of the Metropolitan Gas Light Company, of which that formed a part.

The Master: The chances are that except for matters installed in the 65th Street station since 1884, you have no record as to its original construction?

Mr. Carter: None whatever.

The Master: No maps at all?

9405

Mr. Carter: No, sir. Well, I would not say that there is in the engineering department maps illustrative of all of the plants and all of the equipment which we have. My impression is that they are there.

Mr. O'Brien: This is very important, because on this will hinge the admissibility of testimony based upon estimates as to the original cost. They may say when we come to put that in, "Why, we had that available, there is no need of estimating it."

The Master: Can't you get one of the engineers

9406 down here with some drawings and information about the 65th Street station, to see how much they have got?

Mr. Carter: Tell Mr. Davidson to come down.

Mr. Maltbie: Ask the engineer who made up these figures to give you the details of the items, item by item.

The Master: That is proof that they will have to offer.

Mr. Hine (one of the experts for the defendant): There are very few maps showing present apparatus in these stations except the general outline maps showing the larger pieces of apparatus, that is, a 9407 map of the property with the buildings outlined thereon, and the location of large pieces of apparatus, boilers, engines, pumps, etc., indicated on this map, a sort of bird's eye view of the plant.

The Master: There aren't any more detailed charts or maps than you have described?

Mr. Hine: There are some, but very few, showing details.

Mr. Carter: One of the questions raised by the defendants in this connection is that these inventories do not indicate whether the foundations of apparatus are included in the buildings or are not included in the buildings, ignoring the fact that 9408 we have indicated plainly on this inventory that it follows the uniform system of accounts prescribed by the State, and that it is plainly indicated in the uniform system of accounts that the foundations of apparatus are included with the apparatus. They ought to know that.

Mr. Maltbie: If they are a part of the building.

Mr. Carter: If they are a part of the building —they are not a part of the building.

The Master: Here is a map which is designated "Insurance map, 65th Street station".

Mr. O'Brien: Mr. Davidson, will you say from 9409
what file that is produced?

Mr. Carter: From the company's files.

The Master: Which department?

Mr. Carter: The engineering department.

The Master: Is this a map that you saw, Mr. Hines?

Mr. Hines: Why, I can't remember. I went over a great number of maps, had a man going over hundreds and hundreds of them, and we went over a card file of maps and picked out those that we thought were of any value, and looked at those. There were just some fifty or sixty maps or blue prints that were requested. 9410

The Master: Have you any notion that any maps or data are being withheld from you?

Mr. Hine: Oh, no, I have not requested any specific thing and they have said, "No, you can't see that"; but of course I don't know what they have.

Mr. Ransom: You have no reason to think that anything is being withheld?

Mr. Hine: No.

Mr. Carter: You have had access to our card index and maps?

Mr. Hine: Yes.

Mr. O'Brien: It took you four weeks to get 9411
those, didn't it?

Mr. Hine: Yes, it was something like four weeks before they came to my office.

Mr. Carter: But you had access to the maps four weeks ago.

Mr. Hine: Yes, we asked for copies.

Mr. Ransom: We had to make the copies.

Mr. Carter: We assigned a place in the drafting department where they could work and placed the card index at their disposal, and they called for any map that they wanted.

9412 Mr. Hine: And got them.

Mr. O'Brien: The question is whether they got the information they wanted.

The Master: Is there anything else that you want to ask, Mr. Carter?

Mr. Carter: Your Honor, to speak of the mains for a moment——

The Master: Oh, I am off mains.

Mr. Carter: Our general system respecting the inventory of the plants is that the information given is all that we have except that we would go out and do the very thing that the defendants would have to do if the information was not considered ade-
9413 quate by one of our engineers who was going to make an estimate of the cost of reproducing that property.

The Master: You state here in all these cases, original cost, actual or estimated. I am of course perfectly clear that they cannot ask you to give the basis of your reconstruction estimate. The point is whether they should not be furnished with the basis on which you take the estimated or actual cost. In other words, so far as actual cost is concerned, they are entitled to these records to check them up.

Mr. Carter: We have furnished them. We have
9414 given them actual cost here for a period of thirteen years. The books are available back of that.

Mr. O'Brien: Wouldn't it be well to have it understood what we are going to get on original cost prior to that time?

The Master: I think it is perfectly plain that counsel for complainant says he has given you all he intends to give you.

Mr. O'Brien: If he will make it definite what he has given us so there will never be any doubt about it from now on, what he has refused to us and what they are willing to give us.

Mr. Ransom: I will make that perfectly plain. 9415
All that we are going to furnish to you in the way of tabulations, in the way of original cost, were furnished to you months ago. Further original cost figures are found in the books which are available to you, as they are to us.

Mr. O'Brien: When you say we were furnished months ago, you refer to the tabulations that covered the years from 1906?

Mr. Ransom: I do.

Mr. O'Brien: Not any prior years.

Mr. Ransom: I do not now recall any original cost figures that have been furnished to you in tabulated form prior to that time. 9416

Mr. O'Brien: I want to find out—Mr. Carter says one thing and Counsel Ransom says another. Mr. Carter says that there are certain things that they haven't got the record of original cost——

The Master: Wait a minute, I will summarize the situation. Now, Mr. Carter, am I to understand that this company has no record of the actual cost of any plant or equipment of any kind prior to consolidation?

Mr. Carter: No, sir.

The Master: It has not?

Mr. Carter: No, sir. I qualify that: Years ago there used to be in our files some of the records of 9417
the old companies that were consolidated. Whether they would show it or not, I don't know. It is a pretty long time ago.

Mr. O'Brien: You can get those?

The Master: Are those records still extant?

Mr. Carter: I don't know.

The Master: If they are extant will they be submitted to the experts for the defendants?

Mr. Carter: They will be.

The Master: Now, we start with consolidation.

9418 Mr. Clark: They were asked for those books and could not find them.

The Master: Then the answer is that they have not got them and can't give them to you.

Now, starting with the first of January, 1895, are the records of this company complete as to the actual cost of installation?

Mr. Carter: Absolutely.

The Master: From 1885 down?

Mr. Carter: To date.

The Master: So that the defendants' experts have access to the records of this company showing actual cost of installation and construction of plant
9419 and equipment?

Mr. Carter: Acquired since November 11, 1884, to be exact, which was the date of consolidation.

The Master: Instead of giving the defendants the estimated cost of structures and plant equipment on hand January 1, 1885, you have given them only the actual expenditures since January 1, 1906, and estimated the cost prior thereto. Is that the way of it?

Mr. Carter: Estimated cost prior to the date that this detailed information goes back to, if it is January, 1906.

The Master: It would be possible for you to ex-
9420 tend this schedule furnished as to actual moneys paid out for construction of plant and equipment since January 1, 1906, you could extend that back to January 1, 1885, if deemed necessary?

Mr. Carter: It would involve an enormous amount of work.

The Master: It could be done?

Mr. Carter: It could be done.

Mr. Clark: It could have been done.

The Master: It could have been done and could be done now.

Mr. Ransom: By any one who wants to submit 9421
original cost figures.

The Master: Now, I understand from what Judge Ransom just said that counsel for the complainant takes the position that they are not required and are not willing to furnish original cost figures; is that correct, Judge Ransom?

Mr. Ransom: Beyond what has been furnished, except in so far as access to the figures is furnished, but we do not furnish tabulations of them.

The Master: The figures furnished to the defendant, as I understand it—I may be repeating myself—are the actual money outlays since January 1, 1906; is that correct? 9422

Mr. Carter: That is my understanding.

Mr. Ransom: They are.

The Master: Now take this sheet 3, referring to the 66th street station, it says original cost, actual or estimated, $17,000. That means that it in fact includes moneys actually outlaid since January 1, 1906, and back of that is an estimate?

Mr. Carter: That is so.

The Master: And I understand from you, Judge Ransom, that you believe, as counsel for complainant, that that is all you are required to give, and that you decline to give any more?

Mr. Ransom: I do not believe we are in any way 9423
required to give even that.

The Master: But you decline to give more than that?

Mr. Ransom: We do, except that we give them free access to the books, which show what they may regard as original costs? Original cost is a term somewhat difficult of definition.

The Master: Now, as I understand it, counsel for the complainant takes the position that the complainant will not furnish tabulations of original cost of capital expenditures prior to January

9424 1, 1906. I also understand that counsel for the complainant, and the complainant itself, has on hand records showing actual capital expenditures from January 1, 1885, to December 31, 1905, which are available to and subject to inspection by the defendants and their experts?

Mr. Ransom: That is correct.

The Master: That the company has no records of its own showing actual costs or capital expenditures prior to January 1, 1885, and from Mr. Carter's statement he is not at all sure that the Consolidated Company's records are here which show that.

9425 Mr. Ransom: Of course, there is this inventory of Rowland, the inventory of 1884. The extent to which that takes into account original costs up to that time——

The Master: Well, I have never heard of the Rowland inventory.

Mr. Ransom: That was the inventory at the time of the consolidation.

The Master: Then, as I understand it, as part of this capitalization of thirty million dollars, there was an inventory on which it was based.

Mr. Ransom: There was an inventory made at that time.

9426 The Master: Is that available?

Mr. Ransom: It is available. It was in evidence in the prior case, and this case will not close without it being in evidence.

The Master: Is it subject to the inspection of the defendants?

Mr. Ransom: All of them have copies of it, because it is printed, as I recall it, in the record of the prior case; it is printed in the record of the Stevens Commission; it has been printed in the investigation of the Gas and Electricity Commission. If any of the defendants have not copies of

that in that convenient form, I will be glad to try 9427
to get one for them.

The Master: Then, as I understand it, it is the attitude of the complainant, that if the experts of the defendants will take the Rowland inventory of 1884, and will take the original books and records of this Company from January 1, 1885, to date, they can check up absolutely and practically without question, the actual amounts expended from time to time for the construction of buildings and the laying of pipes and mains and the installation of equipment?

Mr. Ransom: They can take these actual outlays. It is true of course, that the uniform system of 9428
accounts was not in effect as of that period.

Mr. O'Brien: When Mr. Carter was quizzed about the records prior to 1905 on the question of original cost, he said that they would show the amount say of mains installed. Well, that is a total amount. It does not particularize, and I take it that when he says the books show what the original cost is from 1884 down to date, he does not mean that you could get the detail, although perhaps annually you might find so much spent for mains, so much for services. The reason I want to have the record made clear on that is that if we put a man on the stand who proceeds to say from the data that he 9429
has been able to collate from various sources, what the cost of laying mains would be in a given year, we will be met with the proposition that we cannot put in an estimated original cost, where the actual original cost is available. When they say now it is available, let us have it clearly understood what is available during these years.

The Master: What I want to do here, Mr. O'Brien, is to find out just what the complainants are willing to furnish, what they say they will not furnish,

what they say is accessible to the defendants in a different form.

Mr. O'Brien: Mr. Carter will say if I am in error on that.

The Master: Mr. Clark wanted to ask a question of Mr. Carter.

Mr. Clark: In regard to these pages 60, 61, 62 and 63, there are a large number of buildings in the 21st street plant. Now, to find the original cost of the valve house, to take one item, unless that appears in the 1884 inventory, or in the additions from 1906 to date, it would be necessary, would it not, to go through the books from 1884 to 1906, to find out when that particular valve house was constructed, and to find its original cost.

Mr. Carter: Yes.

Mr. Clark: And all the changes made since?

Mr. Carter: Yes.

Mr. Clark: And that applies to every item on these three and a half pages?

Mr. Carter: It does.

Mr. Clark: The point is that this schedule is of no value to us. Unless we know when the original construction was made, and when any additions were made to it, it is of no value to us, because we can make this up from the books ourselves, with the same labor that it would take to go back through the books from 1884 to 1906, and check up each item.

Mr. Ransom: We will put somebody to work with you to secure that information.

The Master: We have here a rate case, which, in some respects is rather different from the ordinary litigation, in this respect, and practically this only; that is, that a public utility corporation, asking for a decree that a statute limiting it as to price is unconstitutional, because it is confiscatory, must throw open their records to the defendants, so as to

afford the defendants a very full opportunity to 9433
examine into the situation. Now, here is a company which has been in business since 1884. That is thirty-five years, and it has voluminous records. As I said before, I think it would have been a good thing had the Public Service Commission, when it was organized in 1908 or 1909, called upon all the public utility corporations under its supervision to file with it a complete inventory. That would have been the ideal thing to do.

Mr. Carter: Just an inventory; not an appraisal?

The Master: No. Commissioner Maltbie tells me that the Public Utilities Companies apparently contested the right of the Commission to call for 9434
that, because no rate question was pending before them, and possibly there was some basis for that contention on the part of the public utilities companies; but there was no reason why, as Judge Ransom suggests, the Commission could not have made its own inventory.

Mr. Ransom: And they did.

Mr. Maltbie: They did not, except where there was some proceeding pending.

The Master: I disregard it entirely. Simply in passing I am saying what would have been the ideal thing. Now, the defendants in an ordinary case, requiring a bill of particulars, have a right to call 9435
upon the plaintiff to state with particularity the basis upon which the claim alleged in the complaint is founded. It is very largely in the nature of—I think the courts have said—an amplification of the complaint. Now, that ordinarily entails but a simple amount of labor, or rather, a nominal amount of labor. You allege in your complaint that you made a contract as of a certain date. Well, it is easy enough to state in the bill of particulars whether the contract was in writing, whether it was signed by an employee, if so, by whom, and so on. Now,

9436 we come into a rate case. The complainant alleges in its complaint that generally speaking it has invested a capital of sixty million of seventy million dollars. You say you want the particulars on that. The Court has then this problem before it: The defendant is entitled to some particularization of the allegation of the complaint. They are required then to furnish schedules of the property claimed to be used in the gas making business, and what they say is the basis for this rate, and they must throw open their records to the examination of the defendant; and in doing that the courts have gone one step further than will be allowed in an ordinary
9437 litigation between private parties, and the defendants have this unusual opportunity in this rate case of coming here in this complainant's offices, and looking through every record extant, the maps, pay rolls, vouchers and everything else. Why should they be required to tabulate all these things and make up an inventory? I don't see it.

Mr. Clark: Under your Honor's ruling the complainants in this case are relieved of the responsibility of putting in common law proof. They do not have to prove the values.

The Master: Who says so?

Mr. Clark: They put in their books.

The Master: Who says that is not common law
9438 proof?

Mr. O'Brien: I stand on my objections to that.

The Master: Counsel for the defendants and the Master have disagreed as to how far the common law rule now extends, but the Master's ruling is that the rule as now extended goes so far as to include these records as common law proof. That is where you and I differ.

Mr. O'Brien: Your Honor, here is the point that we seem to get away from. There are two things involved in this idea of an inventory. One is that the defendants are entitled as a matter of right to

a bill of particulars. The extent of the minuteness 9439
of the bill of particulars, is a matter, I assume, that rests with the Court. To save the making of a motion for the examination of witnesses before trial, and for a bill of particulars, a request is made in rate cases, and a complete inventory given. Now, that is one branch of the question, the question of the right to that information, the question as to what they are going to prove. The second part gets away from the question of the right, and gets down to the question of the reasonable expedition in the trial. Unless these things are given in particular, two things will result. First, it is going to result in the consumption of a large amount of time in 9440
cross-examination. That is bound to come.

Secondly, it is going to result in a positively necessary request on the part of the defendant after the complainant's case is in for a long time in which to make investigations because of what has been brought out on the direct testimony. Let me illustrate: Mr. John Jones, a utility expert, so-called, one of the craft, is put on the stand, and he proceeds to give the reproduction cost of this property. He comes to these things and we are going to bring out in detail the dimensions of every one of these items, summed up in that total.

The Master: Yes, and I will allow you to do that.

Mr. Carter: The dimensions are given here. 9441

Mr. O'Brien: When we come to a purifier house we will say, "Did you measure that?" He will say, "Yes, sir." We will ask, "What are the dimensions?" He will say, "I didn't do it, my men did it. I will have to look at my working papers." We will get that, and then after pulling and hauling we will get down to the details of his estimate. Now, that is what this is going to mean, and we are going through that, and they are going to prove

9442 their case here just as sure as this building is standing on this spot.

The Master: Let me interrupt you. I am not going to take proof as to the invested capital until I am through with the proof as to what it costs to make gas, irrespective of the capital invested. Now, just follow me a minute.

Mr. O'Brien: I understand it. If it costs more than 0 cents you would not care what the base is.

The Master: Precisely. Now, having the power to direct the order of proof, I am going to direct, as I think I already have directed, that when Mr. Teele's examination is finished I want the engineer
9443 of gas making on the stand, with such proof and such information as will indicate to me, supplementary to these books, that it takes a certain amount of oil, a certain amount of coal, a certain amount of labor, that by certain well defined tests and records, it takes just that much to make gas——

Mr. O'Brien: You are talking now about a theory or about a fact?

The Master: I am talking about facts.

Mr. O'Brien: You mean how much did it take this company as to a certain year to make gas?

The Master: I am going to get at it both ways.

9444 Mr. O'Brien: You are going to find out how much it costs the Astoria plant to make gas?

The Master: I will take it from every possible angle. If I get to a point where I can say that there is not the slightest doubt in the world that it costs this gas company to make gas of a certain candle power—and don't forget that, Judge Ransom—all of this proof as to what it costs to make gas must be supplemented by proof that this gas is of a certain candle power—if the proof shows that it costs them 80 cents to make gas, and that they have got to furnish it for 80 cents, I am not going to spend the

rest of my life to find out what the invested capital 9445
is.

Mr. Ransom: You mean to make and distribute?

The Master: Make and distribute.

Mr. Carter: In regard to this question of the details in which this information is given, Counsellor O'Brien has talked about a purifier house, and when a witness comes on the stand he has got to tell something about the purifier house. I would like to read the detail on that, here that I have got under my finger. The detail given is the three dimensions of the structure, 66 feet by 184 feet, by 33 feet; two story brick building; south and east walls 20 inches thick, with butresses; north wall 9446
16 inches thick; west wall forms party wall with condenser and scrubber house; roof steel trusses, covered with slate on sheathing.

I say that any engineer can estimate the cost of that structure and find its cubical contents, if he knows how to do it.

The Master: Following up the thought that I was expressing before, if the proof shows that it does not cost them 80 cents, but costs them 60 cents to make and distribute gas, then I will have to go pretty carefully into the invested capital, because it may make a difference whether it is $30,000,000 or $60,000,000. The first thing I will 9447
bring out from the complainant's standpoint is how much it costs to make gas. Now, their records show, and Mr. Teele will undoubtedly testify, in line with the tabulation that he had in court yesterday, that they lost money by making gas in 1918. I am assuming that that proof will be that for 1918 it cost them to make and supply and distribute gas more than 80 cents, because they lost money on it. Now, you gentlemen are going to cross-examine, you are going to bring out various points with reference to it, and then I am going to

9448 require them to show me in a different form, and from different bases just what goes into making gas and how much it costs to make it.

Mr. O'Brien: In a hypothetical plant with ideal conditions?

The Master: I am going to get at it in every possible way that I can get it.

Mr. Chambers: We will try out and see what it costs to make gas at Astoria.

The Master: What I want to know is whether there is any other inquiry that any of you gentlemen want to make of Mr. Carter or any other officer of the company here with reference to avail-
9449 able records, and whether there is any other statement that any of you gentlemen want to put on the record with reference to the present situation?

Mr. O'Brien: I think the only way in which we can do that is to let each man take this up. It is too important to rush through a hurried informal symposium such as we have held up to this moment.

The Master: I don't know that it is so short, I have spent two and a half hours on it.

Mr. O'Brien: There has been a cross fire here, questions asked by me, and interruptions, and then I have taken up the thread afterwards.

9450 The Master: Do you want to ask Mr. Carter anything?

Mr. O'Brien: I want to get down to the question of the original cost and get a definite answer. Mr. Bemis asked Mr. Carter if they did not have a showing of the amount of additions to capital during each year, and he said, yes, that it would show how much was added for mains. I take it that the record of original cost is given in totals. Is there anything else that is available to the defendants, Mr. Carter, any records where, for say the year 1899, we can turn and get a statement

giving the details of the 6-inch pipe, the 2-inch 9451
pipe and the 10-inch pipe, the 12-inch mains, and so on, that were added to the plant of this company during that year, the number of services that were added during that year, the specials, and the cost?

The Master: The Master will state that from his examination of the records produced before him apparently that does appear in detail. Mr. Carter need not answer.

Mr. O'Brien: I want to get the answer?

The Master: I am making the statement now. I looked at the books.

Mr. O'Brien: State where it appears? 9452

The Master: I will not permit any further question on that. I have seen the books, they show it, and I have spread on the record just how they show it. The next question.

Mr. O'Brien: I am asking about the witness' statement in answer to Dr. Bemis. If the stenographer will go back there——

The Master: No, the next question.

Mr. O'Brien: I take an exception, then, to your Honor's ruling in that regard.

The Master: Yes.

Mr. O'Brien: There isn't any use in my going ahead with the examination of the witness. 9453

The Master: I don't know, you may have some other questions that I will allow.

Mr. Bemis: You were talking with some one, your Honor, and Mr. Carter answered a question I asked him. I think you would make a little different statement if you understood it.

The Master: Very well, let me hear what is in your mind?

Mr. Bemis: Mr. Carter said they would have the total cost of mains, say in 1900, or 1890, they had to have that because they make up a total con-

9454 struction cost for the year, of which mains is one element. But he said in making up that cost of mains so many dollars—we said $400,000 for a certain year—they could not give us the division of moneys that entered into that $400,000, how much of it was 8-inch main, how much of it was 16-inch main. They must get at it by some process of addition. I wanted to ask Mr. Carter how we could learn just how that $400,000 was reached.

The Master: If Mr. Carter made the statement that you could not tell from these books about that, I will let him explain it.

Mr. Carter: I did not say that you could not get
9455 that. I said that at present we haven't got that information tabulated in that form.

The Master: Do not these books that I had in my hand show from time to time how much main was laid, the sizes of main, and how much it cost?

Mr. Carter: Exactly.

The Master: It is simply a question of adding it together?

Mr. Carter: Simply a question of adding it together.

The Master: So, you see I was perfectly right about it.

Mr. Bemis: Excuse me, I did not understand it.

9456 Mr. O'Brien: Will you state definitely now whether or not the works tickets for the period prior to the last seven years are in existence anywhere?

Mr. Carter: I don't know; if they are they will be at your disposition.

Mr. O'Brien: When will we be able to get a definite statement from you in that respect?

Mr. Carter: Whoever you put on this work will get that as he asks for any specific thing.

The Master: In other words, if they ask for 1910,

if you find they are not here any more you will tell them? 9457

Mr. Carter: We will tell them, but he will get 1910, I am sure. I think they will go back to 1910. The best evidence of that will be for him to ask for what he wants, and if they have it they will get it for him.

Mr. O'Brien: Have you available the third dimension that I referred to in regard to structures that involve steel?

The Master: What is the third dimension?

Mr. O'Brien: The thickness.

The Master: Steel in the buildings, you mean?

Mr. O'Brien: Yes, and apparatus. 9458

Mr. Carter: The prints that have been available for the defendants, I understand they have that information, the detail drawings that they have had access to for some time.

Mr. O'Brien: Take the main books that were shown to the Master to-day, and which you say run back to 1884. Is there any employee of the company that has worked on them for a long period, or do they pass from time to time to different men?

Mr. Carter: They do pass from time to time to different men, and since the war there have been many changes in employees due to circumstances over which we had no control. 9459

Mr. O'Brien: Those main books are made up from the monthly reports?

Mr. Carter: They are made up identically the same by the different clerks who make them up. They use the same original data.

Mr. O'Brien: Let me get the chain of documents that pass from the work ticket to these reports. These main books are made up from the monthly reports?

Mr. Carter: Signed by the superintendent of the branch department.

9460 Mr. O'Brien: And the monthly report is signed by the superintendent, or is it made up from a report of the superintendent, signed?

Mr. Carter: No, we have the report of the superintendent.

Mr. O'Brien: Signed by him?

Mr. Carter: Signed by him.

Mr. O'Brien: And he makes it up from the reports that come in to him from the foremen?

Mr. Carter: Exactly.

Mr. O'Brien: The work tickets show the material and labor both, and costs?

Mr. Carter: Not the cost complete. It would
9461 show the material and would show the labor. It might show some elements of cost, but the labor tickets would not be complete, because they do not know the price of the materials they are using.

Mr. O'Brien: You don't follow the practice of some companies of putting the price on the back of the work ticket?

Mr. Carter: No. The prices are a matter of record here in the general office and the work is done up on 111th street, and those tickets are priced when the data is furnished to the general office.

Mr. O'Brien: Who adds them on: who makes up the final figure, who puts in these additional elements above labor and material as shown on the
9462 work tickets?

Mr. Carter: The cost of the material—that is done in the accounting department; that is filled in there.

Mr. O'Brien: And such things as cartage or freight or demurrage, and all those things are added on in the accounting department?

Mr. Carter: Precisely.

Mr. O'Brien: And before the main book is made up, before the record is made in the main book?

Mr. Carter: You mean the main cost book or the main statistical record? You mean the statistical record showing the length of mains?

Mr. O'Brien: Yes. 9463

Mr. Carter: That is all finished and completed before any record is made in that record.

Mr. O'Brien: For instance, you have here on page 97 of the street main record No. 6, a record of mains laid on the north side of 48th street from First avenue to East River dock line, size 8 inch, commenced June 14, 1912, and completed June 29, 1912, total lineal feet given, lineal feet laid in rock given. Then you have items, one for cartage, and you have items from the Thomas Crimmins Construction Company, W. J. Fitzgerald, pipe, special, inspectors.

Mr. Carter: There is another column to your left. 9464

Mr. O'Brien: There is a column to the left setting forth opposite the same items, except the last two, pipe and specials and inspectors, we have certain amounts given, under the column entitled "Amount".

Mr. Carter: Doesn't that state labor?

Mr. O'Brien: There is no statement as to labor. Yes, that is the general heading, "Labor". Now, how much of that is added, how much of that data is added after the works tickets come in from that job?

Mr. Carter: These postings are made from the operating ledger and indicate the amount of labor, which is taken from the pay roll, and charged against this particular project, which happens to be No. 97, so indicated in the main record. 9465

The Master: What Mr. O'Brien wanted to know was what entries come after the work ticket comes into the office.

Mr. O'Brien: All of these, I take it, are taken from the operating ledger.

Mr. Carter: The work tickets are posted on to a sheet indicating the material taken from stock, pipe and specials, indicating the length of pipe and the

9466 number and size of fittings and special castings that are employed on the job. They are priced and made the substance of a journal entry by which—the amount here is charged, for example, $404.17 for pipe and specials. There is a charge here for inspectors, which is taken from the same source, its original basis in that case being a voucher, $21.39. The cartage which is taken from the journal, where the clearing account "Cartage", is distributed over the various accounts representing the employment of the company's transportation facilities. The other items listed here are bills probably for paving or for sundries, as indicated. That is all taken
9467 from the operating ledger under the dates indicated in the margin of this record.

Mr. Ransom: Referring now to the material?

Mr. Carter: Referring to the material side. The labor is posted from the pay rolls.

Mr. O'Brien: Directly or from the operating ledger?

Mr. Carter: From the pay rolls.

Mr. O'Brien: Through the operating ledger?

Mr. Carter: Through the operating ledger, yes.

Mr. O'Brien: Have you got an old record of some year back in the nineties?

Mr. Carter: I don't know how far back they go,
9468 Mr. O'Brien, but as your men call for anything back of this record, if we have it, it will be produced.

Mr. O'Brien: In the getting up of the inventory, did you depend entirely upon the tabulations of the main books?

Mr. Carter: What inventory?

Mr. O'Brien: There is a total carried over from year to year in the main book?

Mr. Carter: That was another book. This deals with main projects.

Mr. O'Brien: In the other book there is a total carried over from year to year. You carry over in

your statement of mains books, from year to year, 9469
the total feet of mains of each size?

Mr. Carter: That is indicated in the book, yes.

Mr. O'Brien: So that we may say here, turning to the page in this book covering the month of March, we may say that the figure given here 2,255,268 feet opposite six inch under the title "Previous month", that at the beginning of the month of March it is claimed by the company that it had that amount of feet of six inch main used and usable.

Mr. Carter: In the ground, yes, sir.

Mr. O'Brien: And so with the other sizes, and the sum total down below of 84,455,953 feet. 9470

Mr. Carter: Yes, sir.

Mr. O'Brien: Now, did you carry over in this book or in any other book the total cost from year to year by sizes?

Mr. Carter: No, not by sizes. The only record indicating the size of the main and grouping the cost of any particular main project is this record that I have been referring to which is called the street main record.

Mr. O'Brien: What record, if there is a record, carries over the cost not by sizes, but the total cost of mains?

Mr. Carter: The operating record. 9471

Mr. O'Brien: From year to year?

Mr. Carter: From year to year, yes, sir.

Mr. O'Brien: Well, is there some record where the subdivisions can be found on the cost?

Mr. Carter: Right here. I have described it in great elaboration and detail, how the subdivision of the cost of any main project may be found, and the size of the main indicated thereon.

Mr. O'Brien: It would be necessary for the accountant to take the records for each year shown

9472 in that book that you refer to, the main accounting book, and make his own tabulations.

Mr. Carter: The street main record, yes, it would be necessary for him to make his own tabulation if he wanted to group the 8-inch, the 6-inch, the 36-inch, or any other sizes, it would be necessary to group them from this record.

Mr. O'Brien: You would have to turn to the operating ledger to find the elements of overhead entering into the cost of mains?

Mr. Carter: Such overhead charges as drafting and superintendence and that sort of thing, of course would have to be taken from the operating
9473 ledger. This does not divide, for example, drafting.

Mr. O'Brien: By this you mean the main accounting book?

Mr. Carter: It does not. It deals with the pay rolls, labor, material, paving, etc.

The Master: There is no superintendence included in here at all?

Mr. Carter: No, sir.

Mr. O'Brien: Haven't you got a record of the years, an engineering record of the cost of different sizes in the different years?

Mr. Carter: No, we have not.

9474 Mr. O'Brien: You let this work out under contract, didn't you?

Mr. Carter: If any contract has been let out the full information regarding it is in our books.

Mr. O'Brien: At that time, in that particular year, the work was being done by contract and not by your own men. I assume that because Crimmins is in there as a contractor. Hasn't your engineering department a record of the cost of laying certain sizes of mains by given years?

Mr. Carter: There is no other record as complete

as this record as to the cost of laying any main projects. 9475

Mr. O'Brien: Wouldn't your engineering department have available the cost of laying mains in a given year by sizes?

Mr. Carter: No, they would not have that.

Mr. O'Brien: You say they have none?

Mr. Carter: I am sure they haven't got it. The cost to the company of laying these mains is a matter of record in its account. The street department could not by any possible means have all the information that the accounting department has on that subject. It would know labor, it would know materials, but it would not know the price of materials. 9476

Mr. O'Brien: I might state, your Honor, right here, that we were computing in estimated original costs. Counsel would simply state now that they have not got collated costs of laying different sizes of mains back of 1905, and that they will not contest any estimated original costs, on the ground that the cost is not available in these books. Of course that ground would be covered.

The Master: We will take care of that later on. just get any information you want from Mr. Carter.

Mr. O'Brien: I may say, to sum that all up, Mr. Carter, that outside the showing of the books which gives the total cost of the laying of mains from year to year, there is no record of the original cost from 1884 to 1905 available in the books of the company? 9477

Mr. Carter: I have not made any such statement as that. I do not know how far back records of this particular character are available. They may be right back to 1884, for aught I know to the contrary, and they contain, as I have stated, the exact cost of material and labor only, and inspectors, and paving where paving has entered into

9478 the cost of the laying of the mains. They show just what has been expended on each main project.

Mr. O'Brien: Well, you have various items added to your invoice price of the mains there.

Mr. Carter: Nothing that does not appear in the main account of the operating ledger.

Mr. O'Brien: And that would be in the main account of the operating ledger?

Mr. Carter: Absolutely.

Mr. O'Brien: Your idea is that the main account in the operating ledger for any year will show all of the costs and the details of the cost of laying various sizes of mains?

9479 Mr. Carter: Not all of the costs. There are elements of cost that would never enter into an accounting record of expenditures on main construction operations. There are overheads that we do not compute and put in there.

Mr. O'Brien: Do you compute that in the main accounting book?

Mr. Carter: No, we do not put them in anywhere. As, for example, interest on the amount of money expended on main projects—although undoubtedly it is an element of cost.

Mr. O'Brien: Are they in the operating expenses?

Mr. Carter: No, they are not. But we would not assert that that particular main project could be

9480 reproduced for the figure indicated there, because there are administrative expenses possibly that might be allocated to it in order to exactly compute the cost of laying that main as a contractor would estimate it. He would not lay it for that price.

Mr. O'Brien: Now let us get back to the year, say, 1894. The records will show a certain number of 6 inch mains and every other size of main laid. Some record shows that?

Mr. Carter: The main account will indicate the 9481
total amount expended in laying mains.

Mr. O'Brien: The main accounting book will show what amount was expended that year?

Mr. Carter: Yes.

Mr. O'Brien: Is it your representation now that there are elements of expense in connection with the mains laid in that year that are not shown in any books of the company?

Mr. Carter: Yes.

Mr. O'Brien: That have not been recorded?

Mr. Carter: That would be taken into account by a contractor.

Mr. O'Brien: You mean under the reproduction 9482
cost theory?

Mr. Carter: Under the reproduction cost theory, yes. That is all I mean.

Mr. O'Brien: But not in connection with the actual cost?

Mr. Carter: No, all our expenditures——

The Master: When you talk of actual cost, it is something in addition to what your books show was actually spent in money, because there has not been allocated to that cost a percentage of overhead and superintendence and other things that should be added to arrive at a cost basis.

Mr. Ransom: And kept in a separate account 9483
G 281.

Mr. O'Brien: Mr. Carter, where is that? Do you mean to say by that that the company has not charged up on their books the money actually spent? It is somewhere in the books, is it not?

Mr. Carter: Yes, the actual expenditures in laying mains is all here.

The Master: But it is not allocated to that particular job of laying pipe.

Mr. O'Brien: That would not have Mr. Simp-

9484 son senior's *proportionate fragment of salary*; you mean that?

Mr. Carter: Yes.

Mr. O'Brien: And various other overheads?

Mr. Carter: Yes.

The Master: Take sheet 151 of the schedule furnished. They have engineering and superintendence account G 281, original cost $2,000,000. Part of that would go against this project 97?

Mr. Ransom: As expenses incident to work, when such disbursements cannot be assigned or distributed.

The Master: Construction: There would be a
9485 fragment of that charged to it.

Mr. Carter: There would be a fragment of insurance, insuring employees, insuring the public against injury.

The Master: I understand it perfectly.

Mr. O'Brien: While you are right on that point, Mr. Carter, how do you allocate, say, the executive officials' salaries? Is that distributed?

Mr. Ransom: I do not think that is material or within the scope of this.

The Master: It is not allocated to this job at all.

Mr. Carter: There is nothing of that nature
9486 allocated to this job at all.

Mr. O'Brien: Take it today, you have some things, elements of expense that would be chargeable, you say, if they had been charged—even if they had not been charged would be charged to a given job of laying mains?

Mr. Carter: Yes, if we were in the business of laying mains instead of the gas business.. If we were contractors we would have to cover in our contract price items of expense that are not allocated to mains.

Mr. O'Brien: As a matter of actual practice do

you take the salaries of the executive officials and 9487
this superintendent of distribution and the men who are not covered by a weekly pay roll book—are their salaries allocated or distributed to various capital extensions on the one side and operating expenses on the other?

Mr. Carter: No, the salaries of executive officials are all an item of expense.

The Master: Administration expense?

Mr. Carter: Beg your pardon?

The Master: Administration expense?

Mr. Carter: Administration expense.

Mr. O'Brien: Well, they get in the record somewhere. 9488

The Master: Oh, sure.

Mr. Carter: Oh, yes.

Mr. O'Brien: And if they are not added into the cost, they are in the operating expenses?

Mr. Carter: Absolutely, one place or the other. But administrative officials or executive officials, as I have stated, are all charged to——

Mr. O'Brien: Take Mr. Simpson, in charge of the distribution system as I understand it, his salary would be for a given year charged up to administration, would it?

Mr. Carter: I think either administrative expense. I would not be sure that we make any allo- 9489
cation of his salary to the capital account.

Mr. O'Brien: So that if you have not added it, these various elements, overheads, a little insurance and a little interest and a little administration expense, a little office rent and so on—if you have not added that to the cost of the various jobs of laying mains and doing other work of that nature, it is in the operating expenses?

Mr. Carter: Yes, Mr. O'Brien.

The Master: Did you want to ask any more questions?

9490 Mr. Chambers: I did, a lot of them.

The Master: We are going to stop at one o'clock.

Mr. Chambers: I am going to go over the very things you asked about in the other schedule.

The Master: I am not going to let you ask him any questions on that.

Mr. O'Brien: I have not finished, your Honor.

The Master: Yes, I think you have.

Mr. Chambers: When I came this morning I had not intended to ask any questions to amount to anything.

The Master: You see this is not a hearing at which counsel are entitled to direct and cross-examina-
9491 tion. It is an investigation by the Master, and I think I have investigated as much as we want.

Mr. Clark: There is one item here on page 150 of gas stoves——

The Master: Wait until Mr. O'Brien gets through.

Mr. O'Brien: Mr. Carter, referring to the various details, as to apparatus, you say there are available in the engineer's office the plans, drafts there that would indicate all of the dimensions?

Mr. Carter:

A. Every plan, diagram, blue print, tracing, that we own, is available to the engineers for the defendants.

9492 Mr. O'Brien: So that that could be gotten out by your men and checked up and——

Mr. Ransom: How many of them copies have been furnished to Mr. Hine?

Mr. O'Brien: Well, about the pressure of given holders? I referred to it in my objections the other day, to the adequacy of this inventory.

Mr. Carter: The pressure thrown by a holder?

Mr. O'Brien: Yes.

Mr. Carter: I do not know whether we can furnish that information or not. If we can we will.

Mr. Ransom: It absolutely is not within the scope 9493
of an inventory.

Mr. O'Brien: Judge Ransom, if you will only get out of your mind that you are giving something to somebody, you will only impress yourself with the idea that there is some one trying to help this case.

The Master: And if you will only get in your mind that I am going to stop here pretty soon and every minute is valuable you will not waste time arguing with Judge Ransom.

Mr. O'Brien: Could not your engineers furnish that information?

Mr. Carter: I do not know.

Mr. O'Brien: Well, your experts are to go on the 9494
stand and they will be asked these questions, and can't they tell us beforehand?

The Master: Are there any records of your company that show what the pressure capacity is of any of these holders?

Mr. Carter: Not that I am aware of, your Honor. I think it would be largely a matter of engineering opinion.

Mr. O'Brien: That shows the pressure thrown by a holder.

Mr. Carter: I think we might furnish that information. If we have it we will furnish it. There is no secret about the pressure thrown by a holder. 9495

Mr. Ransom: If Mr. Hine does not know it and he will ask the proper engineers it will be furnished or obtained.

Mr. Chambers: What? Ask the proper engineers? Who are they?

Mr. Ransom: If when Mr. Hine starts conferring with the engineers who will work on this thing——

Mr. Bemis: In any one year's report of capital extensions you have so much spent that year for buildings, so much for holders, that must have been

9496 made up by an addition of items. Was that addition of items preserved and can we see it?

Mr. Carter: It is all on the books. It is all in this inventory—not in the inventory but in the schedule we furnished the defendants.

Mr. Bemis: I am talking about the years before 1906.

Mr. Carter: The books indicate it. All the information we have is on the books.

Mr. Bemis: Let me get myself clear. A certain addition was made to reach a certain number of dollars for holders of a given year, say 1897. Is that addition preserved?

9497 Mr. Carter: Why, the books must preserve it. We have not destroyed any of the records.

Mr. Ransom: The books, plans and vouchers.

Mr. Carter: Every dollar expended on any holder project is a matter of record, was a matter of record at the time, and remains a matter of record today.

The Master: I am going to give Mr. Clark a chance to ask one or two questions.

Mr. O'Brien: Take the 21st Street station on page 64, there are numerous apparatuses there mentioned. Is there anywhere we can get that split up, Mr. Carter, that will enable us to estimate it without knowing the actual cost? Take the original cost

9498 as given, which is $112,163., it covers a group of equipment or apparatus, starting with the Knowles Special Compound Duplex Boiler Feed Pump.

Mr. Carter: What page are you on?

Mr. O'Brien: 64.

Mr. Carter: You said something about $163,000. I do not see it.

Mr. O'Brien: $112,163.

Mr. Carter: All right, now I have got it.

Mr. O'Brien: Have you not got a statement somewhere that has that amount split up so we could

hurry through the examination and see how much 9499
you charged for that feed pump?

Mr. Carter: No.

Mr. O'Brien: And if it is right, pass on to something else?

Mr. Carter: If that Knowles Special Compound Duplex Boiler Feed Pump described here was installed subsequent to 1906 the cost is given in considerable detail in the schedule which has been furnished to the defendants. If it was installed prior to 1906 the original cost of it has been estimated, of course, in order to arrive at this total of original cost.

Mr. O'Brien: Where is the amount? Haven't you 9500
got a list that gives the amount?

Mr. Carter: I have not, no.

Mr. O'Brien: Some witness going on the stand will be asked that, and what will he do?

Mr. Carter: I do not know anything about what a witness is going to do when he goes on the stand, Mr. O'Brien.

Mr. O'Brien: Your Honor, I call your attention to just this situation——

The Master: You called it to my attention when you asked the question.

Mr. O'Brien: Here are a number of little things. You take your Babcock and Wilcox boilers, there 9501
may be a certain amount that would be satisfactory to the defendants and they would not waste any time.

The Master: I understand the situation perfectly.

Mr. Carter: Those are all standard apparatuses.

The Master: I am going to let Mr. Clark ask a question or two.

Mr. Clark: On page 150 of this schedule——

Mr. O'Brien: I would call your Honor's attention to the fact that I have a number of pages of this that I want to ask questions about.

9502 The Master: I cannot give you any more time.

Mr. O'Brien: I note an exception.

Mr. Clark: Where would we find the number of gas appliances rented? There is no number stated there.

Mr. Carter: The number of appliances rented is a matter of record.

Mr. Clark: But where?

Mr. Carter: In the accounting department. We can produce that if you wish it.

Mr. Clark: I just wanted to call to the Master's attention the fact that on that entire page (indicating) there are items already totalling upward
9503 of five million dollars, as to which we are not even given the number of items involved. So that there is no basis of estimating the production cost or finding the original cost.

The Master: I think that is a very valid objection. I do not see any reason why that schedule should not have said the number of gas appliances.

Mr. Carter: I think I shall undertake to furnish that.

Mr. O'Brien: You have got the different types and when they were rented, so that we will——

Mr. Carter: No, we do not know when they were rented.

9504 The Master: No, I am talking about the original number that they say cost upward of five million and they only had cost four million. I will make a direction now that the complainant furnish the defendants with a statement as to how many gas appliances rented they charged for in that three million dollar item.

Mr. Clark: Does that direction include the other items on this page—automobiles?

The Master: It is pretty hard to make a direction as to tools and implements..

Mr. Clark: How about automobiles? That is not 9505
so bad.

The Master: I shall direct a statement as to the number of automobiles, the number of horses and wagons, the number of scows. That is all.

Mr. O'Brien: Your Honor, right on that question of appliances, the various types of appliances they rented out in different years, the question of depreciation is very important in this case.

The Master: Yes, but I am not going to require them to give that.

Mr. Clark: Do you know where the constituent books of the different companies other than the Consolidated are? 9506

The Master: He said they might still be here.

Mr. Clark: Well, are they still here, the books of the old companies?

Mr. Carter: I do not know.

The Master: Are they still here?

Mr. Carter: I do not know, your Honor.

The Master: They may be?

Mr. Carter: They may be. I know personally I have not had occasion to look at them for twenty years.

The Master: Now Mr. Chambers, I am going to let you ask a few questions.

Mr. Chambers: Take all the plants and station 9507
structures, we would like to have them furnish us with a bill of particulars as to when each one of those buildings was built.

The Master: I will not do that.

Mr. Chambers: So far as subsequent to 1906 is concerned.

The Master: I will not do that.

Mr. Ransom: Anything subsequent to 1906 we have already furnished.

Mr. Chambers: When built?

Mr. Ransom: Yes.

9508 The Master: The statement showing capital expenditures will give you the date when they were built.

Mr. Chambers: Your Honor declines to have them give us that?

Mr. Ransom: We have already given them it.

The Master: Yes, any further than you already have it.

Mr. Chambers: Then we would like to have, on page 46, all these works and station structures.

The Master: On page 46?

Mr. Chambers: Yes, 46, 47 and 48. We would like to have them furnish us with the amount that
9509 they attribute to each one of the buildings of the total.

The Master: No, I will not do that.

Mr. O'Brien: Your Honor appreciates it would be time saving?

The Master: Yes, I understand that.

Mr. O'Brien: We could pass up a lot of controversies about it.

The Master: Yes, I understand that.

Mr. Chambers: We can take it up on cross-examination, if they want to pay the penalty. There are fences, page 49, paving, drainage, and so forth, and foundations, all located in Blocks 982, 985, 988, 989 and 991. We would like to have the bill
9510 of particulars of that general statement.

The Master: I will not require any further bill on that either.

Mr. Chambers: Now on page 50 particulars as to the 14th Street holders and accessories, as to how much of the amount at the bottom is attributable to the holders and to the tanks, the valves, pipe connections.

The Master: No, I will not do that.

Mr. Chambers: And the same on pages 51, 52——

The Master: 53?

Mr. Chambers: 53 and all the way through.

The Master: No, I will not require them to particularize in any greater detail.

Mr. Chambers: And all the way through the bill the data as to how they made up the original cost?

The Master: No.

Mr. Clark: If your Honor please, there is one thing, the accountants for the Public Service Commission state that these schedules indicate that actual or estimated original cost is made up by taking the 1906 figures in that 1906 case and adding the additions and deductions since then.

The Master: I have not any doubt that that is what was done, but they refused to admit that that was what was done.

Mr. Ransom: It is not quite what was done.

The Master: Well, I think that is what was done. That is all there is about it; I may be wrong about it, but whether I am right or wrong does not make any difference to me in my conclusion here. Mr. Simpson said he had not taken those figures.

Mr. Clark: It is a strange coincidence.

The Master: Well, I do not know whether it is a coincidence or not. I do not know whether his figures tally. I am going to disregard the findings of the master in 1906, that is all there is about it, and Judge Ransom and his associates might as well understand it now as any other time. I have said it two or three times.

Mr. Ransom: I understood you perfectly in that matter.

Mr. Clark: These schedules they have given us are based on the assumption that there is a finding in 1906.

The Master: All right, Judge Ransom will meet

9514 that when we get to it, I will not take Mr. Masten's figures as binding on me.

Mr. Ransom: But the defendants said and insisted very vigorously before Judge Mayer that we should give them some idea as to what we thought the actual cost was. Now we have given them what we think the actual cost was, figured as accurately as we can, both for the period under the uniform system of accounts and the period prior. If they do not like what our notion of the original cost is let them make their own, as they did in the first instance.

Mr. Chambers: If Mr. Ransom will keep still a
9515 while, I want a chance to speak.

The Master: Go ahead, Mr. Chambers.

Mr. Chambers: We want to know where the original books may be found that Mr. Carter spoke of, so we may examine them—of the old companies, which were handed over to them when the consolidation took effect.

The Master: I shall ask Mr. Carter to make an investigation as to the existence of those original books of the constituent companies, so-called, and upon request deliver them to the experts of the defendants. I cannot do any more than that. If they are not in existence he cannot give them.

9516 Mr. Chambers: On page 72, we would like a bill of particulars as to the chairs, desks, lockers, safes, and so forth.

The Master: No, I am not going to bother with dollars 675. This case is entirely too big to waste time on $675.

Mr. Chambers: Then I take it your Honor is not going to make them give us any information other than is contained in this paper——

The Master: You have not any right to make that statement, because I have already directed——

Mr. Chambers: Except as you have indicated. 9517

The Master: (Continuing.) —directed certain items to be furnished that were called to my attention. If there are others I will make further directions. I have denied your requests so far.

Mr. Chambers: I could go through this. If you are not going to make them give us any more than you have indicated there is no need of my asking any more questions.

The Master: The theory under which I am ruling is this: Wherever in this schedule they say gas appliances $3,000,000, without giving the number of the gas appliances charged for, I am going to make them state the number. 9518

Mr. O'Brien: You mean the types? It will not give us the types.

The Master: You can get that from their inventory books. When they say scows without giving the number, I am going to make them give the number. When they say automobiles, without giving the number, I am going to direct them to give the number. When they say they value a building or a plant with piping and accessories and foundations and retorts and other things, at so much money, I will not require them to give any more detail.

Mr. O'Brien: But they do not give you that. 9519 They do not give you so much money; they give you a total for about fifty items.

The Master: I know that. I will not require them to give any more details. I appreciate fully, as I said before, and as Judge Mayer said, this trial could probably be shortened if they give counsel for the defendants further information; but I do not think the Court has any power to direct them to give it in the nature of a bill of particulars, particularly in view of the fact that all the records

9520 of the company are accessible, or presumably accessible, to the defendants.

Mr. O'Brien: But, for instance, Mr. Simpson has records that would be very helpful and your Honor has not directed them to turn them over yet, although I understood you took it under advisement. There is valuable information. He calls them his private papers.

The Master: I shall rule that any records in the possession of any officers or employees of this company in the nature of reports, or made in the usual course of business, are accessible and are records of this company which must be accessible to the

9521 defendants.

Mr. O'Brien: And they must produce it?

The Master: I am talking about reports, statements made in the usual course of business. Tabulations made by Mr. Simpson or figures jotted down by him as indicating his judgment about things I will not require him to show you.

Mr. O'Brien: Is he going to show us the records of original cost that record facts, not estimates?

The Master: If he has any records kept by his department of the Superintendent of Mains and Streets, which shows any work done from time to time, or the expenses of doing that work, records

9522 kept in the usual course of business as part of the work of this company, I shall rule they are company records and you are entitled to look at them.

Mr. Chambers: And may I say I have kept the faith and I have tried to procure the information we need in order to expedite this case, and they do not seem to want to furnish it, and the Master rules that he has not the power to make them. From now on I want it thoroughly understood that I am relieved of any obligation on my part to expedite the trial of this case.

The Master: I cannot stop you, Mr. Chambers, 9523
from making any statement you like on the record. The fact still remains that it remains the duty of counsel as well as the Master to expedite this case.

Mr. Ransom: I do not think counsel could be any more obstructive than he has.

The Master: You are going to call them names now.

Mr. Chambers: I owe the duty to Judge Mayer to try to get together.

The Master: You still owe the duty to the Court.

Mr. Chambers: I cannot get the information. I will try to get it on cross-examination.

The Master: It is still your duty in the light of 9524
the circumstances as they exist, and with the information you have, with the duty that you have to your client, to expedite as much as you can.

Mr. Chambers: Well, I am going to try to get the information we want by cross-examination, and then I am going to ask what we think is a reasonable time to check it up.

Mr. Ransom: The information is here.

Mr. Chambers: Which will not be less than three months, understand.

Mr. Ransom: The information is here. Most of it has been already checked.

Mr. O'Brien: I want to say this, your Honor. 9525
There are so many things I want to say I do not know where to begin. I want to say this, though, in answer to the continual parrot-like statement that the books are here, and all that, that that does not mean saving of time. It does not meet us frankly. If they would only agree on the things they feel they ought not to produce, the things they are not called upon to give us, and let us agree upon them, that that is the fact, that they won't

9526 produce them, that they have produced certain others, then we will have made progress in the case. They may be within their rights, that they have not any business to turn over any information, that they have given all they are compelled to give under any rule or procedure of law. That would be something. That is all I want to do; to have them indicate what they refuse to give us, so that at some future time we may not be controverting that in Court.

The Master: I think it is perfectly clear what they are willing to give and what they refuse to give. They refuse to give anything more than is
9527 stated in the schedules heretofore furnished, and statements heretofore given, and the Court has directed that they shall furnish certain additional information.

Mr. Ransom: Well, we furnish everything that is in the books and records.

Mr. O'Brien: Did not your Honor say that you did not think you had the power, or Judge Mayer had the power to give us anything further than you have ordered them to give us? Don't you think you would feel perfectly safe to follow the rule laid down by Judge Lacombe in the case—who is now counsel for the complainant?

9528 The Master: What rule did he make?

Mr. O'Brien: He made them give the amounts for each structure here. They gave much more detail than they are giving here. I want to go up, and I want to put it down here as a matter of record, I want to go over each page of this inventory and indicate to your Honor and indicate what we expect them to give us, and make it a matter of record, and you have told me now you have given me all the time you are going to give me. I would

like to do that as a matter of record. There are so 9529
many matters here; there is a question of the office building, what they are going to claim here as a base; what is the detail of the figures that they charge up to themselves, a certain amount here, and charge up some others; the question of the going value they are working in here, on what they predicate it; whether or not it is predicated on the losses of years since 1906, or whether it is predicated on the pioneer losses of this company, or the losses of the companies preceding it prior to 1884; the working capital on which that is predicated, what their position is as to the value of the franchises, and so on. 9530

There are countless matters here contained in this record; the question of testing apparatus over at Astoria; whether or not that is part owned by the Astoria, and part by them; what the individual items are—so that we may say at a glance if it is only five thousand or six thousand that it is approximately correct; we are not going to controvert that, and we will save so many days in the trial of this case. Your Honor, that is our position. If in the question of how Mr. Simpson arrived at these original costs, if they will show us in each case where it was actual and where it was estimated, so we may indulge in making our estimates and feel that when we come to it they are not going 9531
to say, "You haven't any right to estimate that, because if you went far enough in our records, you could have found it—you can see every move we have made this morning is in the direction of saving time, and every move made by the complainant is in the direction of clouding the issue, and consuming time, so far as cross-examination is concerned.

9532 The Master: Let me ask you this, Mr. O'Brien, the penalty of delay in a final determination of this case is on the complainant, isn't it?

Mr. O'Brien: It is, your Honor.

The Master: All right. Now, they are assuming that burden.

Mr. O'Brien: The point is you take it in the unusual case where they give original costs, I am only doing this for the purpose of illustration.

The Master: Yes.

Mr. O'Brien: They have "actual or estimated".

The Master: Yes.

Mr. O'Brien: It simply beclouds the whole thing.

9533 They might just as well not have put it in at all.

The Master: It would have been better if they had said "unknown".

Mr. O'Brien: I say if Mr. Simpson has some paper, some computation before him as to the general tabulation there, wouldn't it be of some aid to us?

The Master: I am not going to add any more than I have done this morning, as appears from the record. The burden of delay is on the complainant, and it is most anxious to have a speedy determination of this case. I am going to proceed with this litigation as expeditiously as I can under the circumstances. I am going to permit counsel for

9534 the defendants, when a witness testifies that a particular plant is worth X dollars, to cross-examine that witness as to his basis, if it takes a year to do it, so long as I am satisfied that cross-examination leads to some result. If Mr. O'Brien takes a month to cross-examine one witness, without doubling the work, leading on from point to point, to indicate that the estimate or opinion evidence given is not reliable, or that the statement made as to the actual

cost is not reliable, I am going to let him examine, 9535
that is all.

Mr. Chambers: That is all I meant by expediting. I wanted to have it.

The Master: If any of the counsel ask questions which I think have already been fully covered, I shall use my discretion in limiting cross-examination, but I shall never limit it, except when I think counsel have made clear the point that they want to make. That is all there is to it. If this case is going to take a great deal longer to try than was estimated at the outset, that burden and penalty is on the complainant, that is all there is to it.

Mr. Chambers: That is all I meant by trying to 9536
expedite it out of court. If we have to get the information in court——

The Master: You haven't been able to do it. Judge Mayer was anxious to give this complainant the relief that they asked, if they proved themselves entitled to it, as quickly as possible. However, if by the refusal to give the information that you gentlemen think would expedite it and limit it, it extends this case longer than might otherwise be found necessary, that is on them; neither Judge Mayer nor I can do anything more for them.

Mr. Chambers: That is a fair statement of my position. 9537

The Master: If it shall be found six months from now, that they were entitled to this relief six months earlier, and they could have got it six months earlier by giving the information, they suffer by it.

Mr. Ransom: We furnished information of over twenty million dollars.

Mr. Chambers: The Master has made a fair statement of my idea of it.

9538 Mr. Ransom: If we would do something as to that particular, we might do something more as to the other.

The Master: There cannot be any controversy on the statement made by me, that they have a full cross-examination in the light of the information they have.

Mr. Ransom: Surely.

Adjourned to Wednesday, September 17, 1919, at 9:15 A. M., to meet in the United States District Court Room, Woolworth Building.

9539 Last Complainant's Exhibit 281.
Last Defendant's Exhibit U.

9540

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 9541

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 17, 1919.

Met pursuant to adjournment in the United States District Court Room, Woolworth Building.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton. 9542
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission.
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Ransom: If the Court please, we might take up one other matter. I have brought back to Court to-day the general ledger. I did not produce it yesterday, because there did not seem to be time or opportunity. I now have here in Court to-day the 9543 general ledger which was referred to in the last hearing held in this room, general ledger No. 5, which covered a number of years, I believe 1912 to date. I offer it in evidence.

Mr. Chambers: For 1918?

Mr. Ransom: Well, I offer it as it stands.

Mr. Chambers: What year is it for?

Mr. Ransom: I think it is 1912 to date. It covers 1918.

Mr. Chambers: We make the same objection that

9544 we made in full as to the admission of the other books of the company which have been offered, as if repeated fully.

The Master: Well, the difficulty with that, Mr. Chambers, is this. I do not think this book is strictly a book of original entry in any sense.

Mr. Chambers: Oh, this is the one we were talking about?

The Master: Yes; I don't think this book is in any sense a book of original entry, and if you press your objection on that ground, I shall have to sustain it.

Mr. Chambers: Yes, I am going to.

9545 Mr. Ransom: I shall be very glad to withdraw the offer on that then.

The Master: You don't have to withdraw it; I shall sustain the objection.

Mr. Ransom: Then let it stand in that way.

The Master: There isn't any question, Mr. Chambers, so we will have the record right, that this is the book that Mr. Brundage referred to, so we do not have to call him to identify the book. I presume you will take Judge Ransom's statement that that is the book Mr. Brundage referred to?

Mr. Chambers: Yes.

Mr. O'Brien: May I ask the witness a question before you rule on that?

9546

The Master: The witness is not called yet. Do you want that book marked for identification?

Mr. Chambers: Yes, sir.

The Master: Mark this book as a defendants' exhibit for identification.

Mr. Chambers: Defendants?

The Master: Yes; you are asking it.

Mr. Chambers: So there will be no question about it hereafter.

The Master: Well, if you want it marked, have it marked.

Mr. Chambers: All right, that doesn't need any- 9547
thing.

Book marked Defendants' Exhibit V for identification.

Mr. O'Brien: What distinction does the Master draw between this book and the other books that have been received in evidence?

The Master: The distinction the Master draws is that in his opinion this general ledger, from the testimony of Mr. Brundage is a tabulation from the other books.

You haven't the right to look at that book, Mr. Chambers, if it is not in evidence.

Mr. Chambers: I though we had the right to look 9548
at everything they have.

The Master: You have the right to look at the books that support the books in evidence, the books and documents that support the books in evidence.

Mr. Chambers: I thought we had the right to look at everything.

The Master: No, you have the right to look at every document which in any way supports the books received in evidence.

Mr. O'Brien: Your Honor's ruling and their proclamation was that the doors are right open, take anything.

Mr. Ransom: They are.

The Master: So far as I am concerned, I am just 9549
telling Mr. Chambers that as a matter of right he has no right to look at that book. If counsel for complainant has no objection, he can look at it, but at some other time, because I am going on with this trial.

Mr. Chambers: I am ready; I am ready to go on with the cross-examination.

Mr. Ransom: I also have the general journal No. 13, which I likewise offer.

The Master: Mr. Brundage didn't say anything about a general journal, did he?

9550 Mr. Ransom: I think he did, the first time he was on the stand, but it was not referred to at the last hearing. It was one of the two books brought into Court, when Mr. Brundage identified the 1918 books, but I did not offer it in evidence, because I did not believe these two general books came within the letter of your Honor's ruling.

The Master: Mr. Chambers, can you state on the record that this general journal is a book made up of items found in the other books of account received in evidence, and that if Mr. Brundage were on the stand he would swear it was kept in the regular
9551 course of business, the same as the ledger? In other words, they journalize their entries for the purpose of the journal, and then have a general journal. If you object to it, I will sustain it on the same ground, that it is not within the rule as to books kept in the course of business, but is a tabulation.

Mr. Chambers: I would rather not make that concession.

The Master: All right, we will have to recall the witness. Go ahead with the cross-examination.

ARTHUR W. TEELE resumed the stand.

CROSS-EXAMINATION CONTINUED BY MR. CHAMBERS:

9552 Q. Mr. Teele, when we left off last Monday, we were discussing page 34 of Defendant's Exhibit 205, and you had told me as to the special franchise that you obtained your information from the report to the State Tax Department largely?

A. Did I?

Q. I think, as my recollection is, that you did.

The Master: Didn't you?

The Witness: No, I did not.

The Master: That is my recollection. What is the fact?

The Witness: I stated that the tax with re-

gard to gross earnings was obtained from the report. 9553

The Master: Wasn't that what Mr. Chambers just asked you?

The Witness: No, he said special franchise.

The Master: That is right. Gross earnings.

Q. Well, did you use the report to the State Tax Commission for that special franchise?

A. That is the amount that was assessed against the company for special franchise tax, and it was based upon the return made.

Q. Well, do you know what is embodied in the assessment, what property? 9554

A. I do not recall.

Q. Did you inquire? Did you go back to see?

A. I saw the reports made by the company. I do not recall them.

Q. Well, did it include the mains of the Consolidated?

A. I will not at this time undertake to say what it includes, because the tax report itself is available and can be produced.

Q. But without that no one could tell just what property was assessed?

Mr. Ransom: I object to that as not in the line of cross-examination. This witness who is produced has made up a tabulation from books, or items of taxation which he finds were made charges against the company. 9555

The Master: The trouble is he says some of them were based on matters otherwheres.

Mr. Ransom: Not the payments.

The Master: Yes.

Mr. Ransom: The law provides what the special franchise tax is, and for the special franchise a certain tax was assessed as a spe-

9556 cial franchise. Now, under the definition of what is taxable as a special franchise of a gas corporation, that becomes a charge against the expenses. In the case of the gross earnings tax, the books show a certain gross earnings tax that was levied by the State. He took that amount and he examined the return in order to find out what of the book items had been shown as the gross earnings, the gross income of the corporation on which the tax of $117,270.92 was based, and made a differentiation of the book items according to their nature, but
9557 on special franchise there is no apportionment whatever, and the nature of the special franchise, the things assessed as the special franchise of the gas corporation is defined by law, and nothing that this witness could say on the subject could either add to it or subtract from it.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you use the report to the State Tax Commission for any purpose in setting up that special franchise tax?

A. No, I did not.

9558 Q. Now, the "tax real estate of corporations". What corporations were included in that? I see it is in the plural?

A. That is the title of the tax that is assessed against the Consolidated Gas Company.

Q. That is the title of the tax?

A. That is the title of the tax assessed against the Consolidated Gas Company.

Q. Where did you get your information as to that item?

A. From the tax bill rendered by the City of 9559
New York against the Consolidated Gas Company.

Q. Did you find whether that had been paid or had not been paid?

A. It has not been paid.

Q. And was the tax bill you procured your information from more than one tax bill, or a number of tax bills?

A. It was the tax bill for the year 1918.

Q. Have you that?

A. Here?

Q. Yes.

A. I have not. 9560

Q. Where did you find that tax bill?

A. In the files of the company.

Q. So, if I correctly represent you, you did not get that item for real estate of corporations from the books, these books that are offered in evidence, but rather from the tax bill?

Mr. Ransom: Do you mean the total or the details?

Mr. Chambers: I mean just what I say.

The Witness: I mean that the item itself appears upon the books of the company, and I referred back to the tax bill to substantiate the amount and the nature of it. 9561

Q. Do you know whether that included any tax on the Astoria real property—the real property of the Astoria Company?

A. I don't know what the City included in it. It is rendered against the Consolidated Gas Company under the title of "Real estate of corporations".

Q. Now the "Real Estate", the next item, real estate, where did you obtain the first sum there from? I see it is divided into two parts?

9562 A. I obtained it from the books of the company, from the accounts appearing on the ledger.

Q. And could you show us——

A. The accuracy of it I substantiated by the respective tax bills rendered by the City of New York.

Q. Was that paid?

A. It was not fully paid. It was partly paid.

Q. Can you show us which book that is in, the page and folio? You tell me the book and I will get it right here?

A. It is Operating Ledger B.

9563 Q. For 1918?

A. For 1918.

Q. The folio?

A. 1112. All these taxes appear in the account of "Accrued taxes".

Q. 1112 would be Ledger A? I have the item at 1112 of the operating ledger for 1918, being Complainant's Exhibit 189. Will you show me just where that entry is in regard to the real estate tax?

Mr. Ransom: The amount is made up and included in the respective monthly amounts, credited to accrued interest on the one hand and charged to taxes account on the other

9564 hand. As I explained the other day, the accrued taxes account is credited monthly with the expected tax liability, and when the tax liability is actually determined that credit so made is either added to or deducted from, in order to make the total credit set up equal to the actual liability when determined, and the taxes as paid are charged against this account.

Q. Was the sum actually credited in the amount you have?

A. The sum actually paid credited? No, the 9565
sum actually paid is charged, not credited.

Q. Where will I find that amount of $539,272.90?

A. If you want I will explain the exact handling of this accrued tax account.

The Master: I thought you had.

The Witness: I thought I had too, your Honor.

Q. I cannot find that sum, can I?

A. The particular sum?

Q. Yes.

A. No, because it is made up of many items.

Q. And the other sum which you have not applic- 9566
able to gas business, where did you obtain that amount?

A. That is the amount of the taxes assessed against the property not included in Complainant's Exhibit 178.

Q. You examined that, did you, and ascertained what pieces of property were not included?

A. I did.

Q. What pieces of property did you exclude?

Mr. Ransom: I object to the question.

The Master: I will let him answer.

Mr. Ransom: It has already been answered a number of times. 9567

The Master: I will let him answer.

Mr. Ransom: Proceed.

A. I excluded those which were not included in the list of property shown on pages 36 and 37 of this exhibit.

Q. Where did you procure that information from, of the pieces of property not shown on Exhibit 178?

A. It was furnished to me by the company.

Q. Is it found in these books that have been offered in evidence?

9568 A. What, the list that was given to me?

Q. Yes.

A. No; the properties are in the books.

Q. The what?

A. The various properties are in the books, but the list that was handed to me is not in the books.

Q. You are certain that the entire list that was handed to you is found in these books that are in evidence?

Mr. Ransom: He said the list is not found in the books.

Q. You are satisfied they are set forth in the
9569 books in evidence?

A. Will you ask your question?

Q. Yes. You said they handed you a list of properties not included in Exhibit 178?

A. They handed me a list of properties.

Q. Real properties?

A. Owned by the Consolidated Gas Company, classified as to properties used and useful in the gas business, and those not; and I have included in the taxes here charged, taxes assessed against properties claimed by the Company as used and useful in the gas business, and have excluded those which are not, and those which are not are repre-
9570 sented by the amount $38,797.04.

Q. The list that was furnished you, have you got that? You gave me the wrong figures there. You gave me $38,000 and it should be $30,000.

A. Yes, that should be $30,333.90.

Q. Where is the list of real property that was handed to you by the Company? You have the list, have you?

A. (Witness hands counsel paper.)

Mr. Ransom: I assume that you are going to offer this in evidence, that you are now looking at?

Mr. Chambers: You do not want to make any violent assumptions as to what I may or may not do. 9571

Mr. Ransom: Then I object to his looking at the list, unless he is ready to offer it in evidence.

The Master: The rule is that if you look at papers that are produced from the witness, you cannot object to their going in evidence.

Mr. Ransom: And counsel has had the list.

Mr. Chambers: I have never heard of that rule before.

The Master: I have.

Mr. Ransom: It is immaterial anyway, because he said he used Exhibit 178. I said you could look at any book. 9572

Mr. Chambers: I want it noted on the record this morning I was denied the right, and perhaps he is right about it——

The Master: Judge Ransom, do not get into an argument or discussion with counsel. The report speaks for itself. The Court said that it would not allow counsel to look at that book any more while the examination was being held up. Counsel for the complainant reiterates now that counsel may look at that book, the general ledger. 9573

Mr. Chambers: Now does counsel object to me looking at this paper under the penalty that I must thereby offer it in evidence?

Mr. Ransom: I do.

Mr. Chambers: You do object to it?

Mr. Ransom: I do. You have had it for several minutes now.

Mr. Chambers: I have not looked at it yet.

The Master: Stop that discussion. Judge

9574 Ransom objects to your examining these papers in the possession of the witness, which he used in connection with his statement or tabulation, unless you do so with the penalty of offering it in evidence and receiving it, because you have examined those papers, and the Master rules that if the offer is made after you have examined those papers, he will receive it in evidence under the rule as he understands it.

Mr. Chambers: Without my examining it or looking at it, I ask that it be marked for identification.

9575 Marked Defendant's Exhibit W for identification.

The Master: You see, the reason for the rule is this, Mr. Chambers: The minute you have access to this paper and read it and analyze it, you are, in effect, having the witness tell you the substance of those papers. That is the reason of the rule.

Mr. Chambers: I have been trying cases all over the state, and I have never had that rule. I have tried criminal cases, and all kinds, where this very same thing has happened, and

9576 no Court yet has forced that rule upon me. I have called for all kinds of documents and statements and read them and never offered them.

Mr. Chambers: I don't say your Honor is right, but if that is the attitude of the company I want the record to show it.

Mr. Ransom: I should be very glad to have this paper placed in evidence.

Mr. O'Brien: Shuttlecock now.

The Master: Don't make bluff offers.

Mr. Ransom: This is not a bluff offer. 9577

The Master: You know they are not going to consent to it.

Mr. Ransom: I know I am going to offer it.

The Master: Are you ready to proceed?

Mr. Chambers: Yes, I am ready.

By Mr. Chambers:

Q. Who made up this paper, Mr. Teele?

A. I don't know.

Q. Who handed it to you?

A. Mr. Carter, the Vice President.

Q. This Exhibit W for Identification is the paper Mr. Carter handed to you? 9578

A. It is.

The Master: It consists of a number of sheets?

The Witness: It does.

The Master: I did not get what that has reference to. What statement did the witness make?

Mr. Chambers: He used that paper as a list of property which he excluded as not applicable to the gas business.

Mr. Ransom: I do not think that is a proper statement of the witness' testimony.

The Master: Is it property that you included or excluded? 9579

The Witness: It is a list of property both included and excluded.

The Master: A statement showing what the gas company said should be excluded and what the gas company said should be included?

The Witness: Yes.

Mr. Ransom: He said he checked it with Exhibit 178, and that it agreed with it.

The Master: I suppose what the witness means when he says that he checked it with

9580 178 and that it agreed with it is that the property marked as being included is shown in pink on Exhibit 178. Is that it?

The Witness: Yes.

The Master: And the other property is not on there?

The Witness: I checked Exhibit 178——

The Master: When you made up your schedule, Mr. Teele, as I understand it, Mr. Carter handed you a statement which has been marked Defendants' Exhibit W for Identification, which he said included properties used

9581 and not used for gas purposes, is that right?

The Witness: That is what the statement shows.

The Master: What is purports to show.

The Witness: Yes.

The Master: And he also called your attention to Exhibit 178, which is a map with a number of sheets, showing property claimed to be used by the Gas Company, colored in pink?

The Witness: I do not think he did at that time.

The Master: But subsequently?

The Witness: I have subsequently seen it,

9582 and I have subsequently compared the property set forth on Exhibit 178 with the items listed on pages 36 and 37 of this exhibit.

The Master: And your testimony is that irrespective of this Exhibit W for Identification the items set forth on pages 36 and 37 have reference to the property colored pink on Exhibit 178?

A. Yes, sir.

Q. You could not check the other pieces of prop-

erty with Exhibit 178, because they are not on there, 9583
could you?

A. No.

Q. So you had furnished you then a list of pieces of real property covered by this tax not applicable to the gas business, which is not found on Exhibit 178?

A. There is property included in this list which is not on Exhibit 178.

The Master: The tax bills included property not shown on Exhibit 178, didn't they?

The Witness: The tax bills covered property not shown on Exhibit 178. 9584

The Master: And you took from those bills only those properties that were shown on Exhibit 178?

The Witness: That is right.

Q. And you also took for this other item the property which was not shown on Exhibit 178?

A. The tax bills have property which was not on 178.

Q. And you had furnished to you by the company a list of pieces of real property which are not found on Exhibit 178?

A. Yes.

Q. In making up this schedule? 9585

A. Yes.

Q. What pieces of real property could that real estate of corporations be, if you had a list of all the other real property?

The Master: What page is that?

Mr. Chambers: That is page 34.

Mr. Ransom: I object to the question as calling upon the witness to characterize a provision of law. The law provides what is the basis of taxation, and what comes under the

9586 category of real estate of corporations. I assume the Attorney General of the State is not ignorant wholly regarding the differentiation between those three kinds of taxes.

The Master: I will let the witness say. Now, you have here on page 34, the first item, Special Franchises.

The Witness: Yes.

The Master: That speaks for itself. Then you have real estate of corporations, and real estate.

The Witness: Yes.

9587 The Master: Can you tell us the difference between the bills for real estate of corporations, and the bills for real estate appearing in the books?

The Witness: My understanding is that the tax levied by the City of New York as real estate of corporations is a tax levied against property owned by the gas company existing in the public streets of the city and not against its separate real estate.

Q. Where is that set up here in the books, that tax that you have of real estate corporations?

A. It is included in the monthly estimates.

9588 Q. On page 1112?

A. In the account appearing on page 1112.

Q. Where would I find that amount of $155,122.20?

A. You will not find it; it is an aggregate of smaller amounts.

Q. Added together?

A. Added together.

The Master: They are not added together, are they? An addition of these estimates will not make this exact figure, will it?

The Witness: Yes, it will.

Q. You say that was not paid. Did you find 9589
that it had been tested or challenged by the company?

A. For 1918 it has not been paid.

Q. Was its correctness challenged?

A. I don't know whether legal proceedings had been started with respect to it, or not.

Q. Did you find that they had paved the way for legal proceedings?

A. I did not so inform myself.

Q. Did you inquire about it?

The Master: He said he did not inform himself. Did you inquire about it as to whether 9590
there was a contest or not?

The Witness: I made some inquiry as to whether it had been paid, and whether it would probably be paid.

Q. What was the result of that effort

A. My recollection is that the company—that I was informed that it would be contested. As to the success of it, of course that is a question. It stands assessed against the company at the present time.

The Master: As an accounting proposition, after making the inquiry you did, you felt that 9591
ought to be set up as a liability?

The Witness: It stands assessed against the company until so removed as a liability of the company.

Q. Now, the personal tax there, where did you obtain that amount, speaking of the personal tax on the same page?

The Master: 46?

Mr. Chambers: No, $23,300?

A. I obtained it from the tax bill as the amount

9592 paid by the company for personal tax for the year 1918.

Q. Was that a tax on—did you look at the bill or push your inquiries far enough to learn what that was?

Mr. Ransom: Here it is, if you want it (indicating book).

The Witness: I learned it was an arbitrary assessment for the year 1918.

Q. By the city?

A. By the city.

Q. Were any stocks or bonds of the Consolidated
9593 Gas Company included in it?

A. It was an arbitrary assessment, and the property against which it is assessed in 1918 is not determinable by any existing record. I did push my inquiry to the extent of finding out what the personal tax was assessed upon for the year 1919, succeeding.

Q. But you did not find it for 1918?

A. There is nothing, so far as I was able to ascertain, that would inform me as to the property against which that personal tax was assessed in 1918.

Q. It might just as well be against bonds which
9594 they hold as against any other property, so far as you could determine?

A. No, so far as my understanding is——

Q. I object to your understanding. You did not find out what it was?

A. I could not; there was nothing to show.

Q. Therefore, you cannot say what personal property it was against, of your own knowledge, or from the books?

A. Except by comparison with the personal property tax levied in other periods.

Q. When was that paid, Mr. Teele, speaking of 9595
that same personal property tax?

A. I shall have to look at the records to find out (examining books). The total amount of the $23,300 was not paid on December 31st, but of that amount $22,314.82 was paid upon voucher No. 7126, issued in May, 1918.

Q. 1919; you mean May, 1019?

A. I mean 1918..

Q. Well, when was it paid? That don't tell me when it was paid.

The Master: Half of the taxes are due the first of May, in New York, Mr. Chambers, for 8596
the year 1918.

The Witness: The voucher is dated May 25th, and the date of the voucher payment I cannot tell without referring to the voucher itself, on which the date of its payment is shown.

Q. Well, the payment was made on May 25, 1918, that would be for the 1917 tax, wouldn't it?

A. It is the tax paid in 1918.

Mr. Ransom: For 1918?

Q. It would be the 1917 assessment though?

The Master: No, not at all. In New York our taxes are payable one-half on May 1st, and one-half November 1st. This may be the 9597
half of the 1918 tax paid in May. Many people pay in full in May and get a rebate. You see, Mr. Teele's statement is that they paid some twenty odd thousand dollars.

The Witness: $22,314.

The Master: What was the total bill?

The Witness: $23,300. There is an unpaid balance at the end of the year of $985.18, at December 31, 1918.

9598 The Master: The rebate could not have been as much as that?

The Witness: No, it is a disputed tax.

The Master: But it is quite apparent that they paid substantially the 1918 tax all in May, 1918.

Q. What about the balance that is unpaid; has that been paid yet?

The Master: He has just stated that is a disputed tax.

Q. Where will I find in the books here this item of $23,300?

9599 A. It is included in the monthly credits to the accrued taxes, as I have previously described, all other taxes are included by monthly apportionments.

Q. It is not set up here, though?

A. As an amount of $23,300 by itself, no, except that it appears in that final journal entry in December, when all of the taxes to be paid during the year are set down.

Mr. Ransom: You mean page 427 of the operating journal?

The Witness: Page 427, entry 1198.

Mr. Ransom: Where all of these items are

9600 given?

The Witness: Where all of the items are set down.

Mr. Chambers: You are doing the very thing you object to, Mr. Ransom, offending seriously.

Mr. Ransom: All right, I beg your pardon.

Q. Now, the government taxes, same page, capital stock, where did you get your information from? Just excuse me. I want to go back to the personal property tax and ascertain why it was that you

set that up as chargeable to expenses in that col- 9601
umn? Why didn't you exclude it entirely?

A. Because in seeking information as to what property it might be assessed against, I found that the assessment for 1918 was an arbitrary assessment, and in examining the assessment for 1919, for a comparison, and in order to satisfy my own mind as to whether it was chargeable against gas property or otherwise, I found that the property that was passed for personal tax in 1919 was all gas property.

Q. So you made the deduction?

A. So I made the deduction that the personal 9602
tax levied in 1918 must have been against similar or the same property.

Q. In other words you made a determination there that you would put it in the gas operating?

A. I made the same determination that I had to with respect to all items, as to whether they were gas or non-gas charges.

Mr. Chambers: I want to direct the Court's attention to that, that as to this personal property, he did not know what it was for, and he made the determination that he would set it up against gas operating expenses himself.

Q. Did you consult anybody about that, or was 9603
that your own idea?

A. As to where I should charge it?

Q. Discretion and determination.

A. As to where I should charge it. I determined that myself.

The Master: On what basis?

The Witness: On the basis that the personal tax for 1919 was assessed against property which is all used in the gas business.

9604 The Master: And then you charged it all against the gas business?

The Witness: Therefore, I had to charge it, or did charge the personal tax for 1918 against the gas business.

The Master: He made no supposition.

Mr. Chambers: No; you see your Honor was reading there. He has already testified that as to this personal property tax he did not know what personal property it was against, there was nothing to show.

The Master: And you think perhaps part of
9605 it should not be charged?

Mr. Chambers: I think there is doubt about it, and that it should be thrown out in getting up a schedule. How incompetent it is to allow an accountant to determine which your Honor has to determine, namely, whether you will charge that tax against operating expenses.

The Master: I have your point.

Mr. Chambers: $23,000, that is worthy of consideration.

Q. Now, the government taxes——

The Master: That would not affect, however, the balance of his accounting, the tabulation,
9606 assuming the rest was from the books, properly tabulated, on the theory I have permitted.

Mr. Chambers: Wouldn't that throw out that twenty-three thousand?

The Master: But couldn't I disregard that item when I came to a conclusion?

Mr. Chambers: It is so full of these, I am trying to show there are so many things.

The Master: But here is a tabulation covering many items, many of which are taken directly from the books, and are purely tabulations

from the books, some of them are sub-divisions and segregations. The query is, can't I take this tabulation, and then have in mind the items that are arbitrarily determined by this witness, and disregard them, perhaps? You see this is what is in my mind—— 9607

Mr. Chambers: I should say not.

The Master: This is what is in my mind, Mr. Chambers. Suppose when we get all through with this, we find that beyond any question it costs them 74 cents to make gas, and not 82 cents, disregarding every possible item about which you complain, or what I mean, disregarding everything, simply taking the supposititious case, now, and there isn't any question in the world but what it costs them 72 cents to make it, giving you the benefit of every claim you make that ought to be surcharged against them, if I am going to come to as fine a point as 72 or 73 cents, the chances are I will have to throw this case out, because we are getting to too fine a point, and that is why my disposition is to take this proof in the hope that either one of two things will happen, either that the complainant has so clearly established the rate to be confiscatory, and that the Court can find it as a fact, or that as to some of the proof put in by all sides, the question is in doubt, in which event they cannot succeed. 9608 9609

Mr. Chambers: But here he offers the whole paper in evidence. He should have one document that is made up in a tabulation; if he wants to present another with all the doubtful items in where he used his judgment and discretion and all that, let us have that by itself. It is very dangerous.

9610 The Master: Well, let us look at it, Mr. Chambers. This witness testifies that their total receipts were X dollars, and that their total expenditures properly charged as he figures them, were X dollars——

Mr. Chambers: Well, he don't.

The Master: Let us assume that I take that tabulation in, and when we come to summarizing the evidence, you point out that now he has charged against operations in 1918, all of this personal property. I say, very well, I am going to exclude that for the purpose of com-
9611 putation. You say, why now he has made an adjustment of fifty or seventy thousand dollars, and there is no basis that you can determine whether that is right or not, and I say I will exclude that. You see we are talking in tremendously big figures here, and in every doubtful question, my disposition would be to resolve the doubt against the complainant, because as I have repeatedly said, I do not think the Supreme Court of the United States is going to upset this statute fixing the rate, unless it clearly appears that the rate is confiscatory. When we come within a half of one
9612 per cent. or one per cent., it is not going to be done. It seems to me they are taking more of a chance——

Mr. Chambers: I don't think you will have any trouble as to the outcome of the case.

Mr. Ransom: May I say a word on that point?

Mr. O'Brien: They are taking chances all right.

The Master: Mr. Ransom wants to say a word.

Mr. Ransom: This item of $23,300, the same as these other amounts of taxes paid appear the specific items on the books. Now, this tabulation, Schedule 14, shows that item $23,300 as taken from the books. The witness puts it in the column of items charged to expenses, as in the judgment of the complainant it belongs there, but in the event that your Honor were of a different feeling when you come to a determination of the case, it would be very easy to transfer that $23,300 to the other column. First, we set forth a fact as shown by the books. 9613

The Master: Go ahead, Mr. Chambers. 9614

Mr. O'Brien: It is not in the journal and it is not in the ledger. The journal refers to page 1112 of the ledger and that $23,000 isn't there.

Mr. Ransom: But the voucher is.

The Master: What we really want to find out is whether the property is confiscated by this 80-cent rate, and we are going to find that out.

Q. Government taxes, capital stock, where did you obtain that amount from, first, speaking of the first amount?

A. It comes from the books. 9615

Q. From this same page 1112?

A. Yes.

Q. It is not there as in these amounts, is it? I mean it is not set forth on page 1112 in the amount which you have set up here?

A. I think it is. Not on 1112, no. None of the amounts appear. $24,807.38 appears on journal, folio 2437, and included in journal entry 1198, and is the amount of the capital stock tax apportioned by the company and charged to operating expenses.

9616 Q. Where is the other amount, $73,678? Where does that appear?

A. It appears on journal folio 428, in journal entry No. 1200, and is the amount charged by the company against non-operating revenue deductions, taxes, $18,170.62; the two items together make the total amount of the capital stock tax.

Q. Did you examine the tax bill?

A. I examined the tax return.

Q. That was in the archives of the company, was it, the tax return?

A. Yes.

9617 Q. Did you look to see what was set up there as non-operating revenues?

A. I looked to see, but my statement of the division of taxes was that followed by the company.

Q. You made no determination of them?

A. Not aside from that shown on the books.

Q. Somebody had made that determination, must have. The government did not make it?

A. The accounting officers of the company, I presume, made the determination as to what was chargeable to operating taxes, and what to non-operating revenue deductions.

Q. Did you know what was included in the
9618 operating revenue when you examined the returns?

A. What was included in the operating revenue? What do you mean, on the return itself?

Q. Yes.

Mr. Ransom: Does your Honor think this is within the scope of cross-examination for the purpose of framing an objection? This is cross-examination after a document has been received. He has taken here a figure from a book.

The Master: I think it goes to the question, I will permit it. It may save time after the paper is received, if it is. 9619

A. No, I do not at this time know what was included.

Q. Was it paid or held in abeyance?

A. The capital stock tax was paid.

Q. Do you know when?

A. It was paid on Voucher No. 16505, which is dated December 3, 1918. The date of payment of the voucher I cannot tell without direct reference to the voucher itself, which bears the date of payment.

Q. On page 38 of this Exhibit 205 for identification you have set up the percentages as to this tax, dividing it applicable to the gas business and not applicable to the gas business. Where did you get those percentages from? 9620

A. It is the ratio existing between the two figures.

Q. You made that determination, did you?

A. I determined that was the ratio.

Q. Now, interest on unpaid taxes. Where did you obtain that from?

A. From the books.

Q. Take the first one. The company failed to pay their special franchise tax, and this is interest upon the amount, is it? 9621

A. It is interest accrued during the year 1918, upon the unpaid franchise taxes.

Q. If they had paid it there would not have been any interest, would there?

The Master: We will assume that to be the fact.

A. No.

Q. You obtained that directly from the books?

A. Yes.

9622 Q. Where is that set up, that thirty-nine thousand and some odd dollars?

A. On the same page as accrued taxes, folio 1112. The account is entitled, "Accrued Interest on Unpaid Taxes."

Q. Now, that is not divided up as to the various taxes, is it?

A. It is handled in exactly the same way as accrued taxes.

Q. That is the fund is allowed to accumulate?

A. Not a fund.

Q. An amount is?

9623 A. An amount is allowed to accumulate. The accrued interest on unpaid taxes is credited to this account and charged to taxes. The total amount at the end of the year appears in the journal entries in the same manner that the total number of taxes appears in the entries.

Q. Interest on unpaid real estate of corporations. That is interest on an unpaid tax?

A. It is all interest on an unpaid tax.

Q. Do those two amounts, special franchises and real estate of corporations, cover more than the 1918 interest?

A. The only interest included here is interest ac-
9624 crued during the year 1918.

Q. But was it not on unpaid taxes for more than one year?

A. It is on the unpaid taxes during the year 1918.

Q. Did you ascertain that?

A. I did.

Q. Where did you get that information from?

A. By making a computation and checking the computations in connection with the entries.

Q. Was the interest for accrued taxes for more than one year? I mean were the taxes for more

than one year? This was the interest for one year, 9625
but were the taxes for more than one year?

A. This is the interest accrued on unpaid liabilities for the year 1918.

Q. And included no taxes except the 1918 taxes?

A. No, I will change my answer. It is the interest accrued during the year 1918 on unpaid liabilities, unpaid taxes.

Q. So that might cover taxes for a number of years?

A. Yes.

Q. In fact it did?

A. Whatever taxes were unpaid at the beginning 9626
of the year and during the year. If interest was accruing upon those undischarged liabilities, it is included as part of the interest on taxes for the year 1918.

Q. Did you look to see how many years' taxes were unpaid which were included in that?

A. Yes.

Q. How many years? How many years' taxes?

A. I cannot say at this time.

Q. What is that?

A. I cannot say without referring to my working papers.

Q. Could you readily tell me about how many 9627
years it covered of unpaid taxes?

A. No, not without referring to the papers in which I checked the computations.

Q. What papers did you use to find that out?

A. I mean by referring to my own working papers.

Q. Did you find it in the books somewhere?

A. I found the amount of unpaid taxes at the beginning of the year and the amount of taxes upon which interest was computed during the year.

9628 Q. How did you find out what years those taxes were which had accumulated in an unpaid balance?

A. By analyzing the balance at the beginning of the year and adding to it the unpaid taxes of the year.

Q. Is it your recollection that it covered four or five years' tax, or not as much as that?

A. Why, in some cases I believe it did.

The Master: As to some taxes?

The Witness: As to some taxes.

Q. On this unpaid balance or liabilities, as you put it, for accumulated taxes unpaid, what rate of
9629 interest did you set up here?

A. I believe it is set up at six per cent (examining papers). It is at six per cent.

Q. Straight six per cent?

A. Straight six per cent.

Q. Is that same answer that you made just now true of the balance of real estate?

A. The interest on taxes is all accrued at the same rate.

Q. And I mean it covers years back the same for real estate, or is that just for 1819 tax unpaid, or is that the balance for that year? Real estate there—you have it subdivided.

9630 A. If you will allow me to correct what I said, the interest is accrued at seven per cent and not at six per cent.

Q. Why did you take seven per cent?

The Court: That is the amount accrued, by the company

The Master: That is the City or statutory interest rate on taxes.

The Witness: These entries are taken from the books.

The Master: I was surprised when he said 9631
he set them up as six.

Q. Take that item of real estate. You have not yet informed me as to whether the balance for real estate or the liability there is the same as the other taxes, that is an accumulation of unpaid taxes.

A. I do not understand your question.

Q. I show you Sheet 37 (indicating)?

A. You are talking now of interest?

Q. Yes, we were talking of interest on special franchise and real estate of corporations, which you said you covered, an accumulation of taxes, and was the interest on that liability for 1918. Now, 9632
real estate you say, you have two items set up there. Was that an accumulation, to taxes, or a liability that has grown up, or was that just the unpaid balance for 1918, on the 1918 taxes?

A. My recollection is that that is the interest on unpaid real estate taxes prior to 1918, which remained unpaid at January 1st.

Q. What is the little item "Personal", interest on unpaid personal tax?

A. That is the accrued interest on the unpaid personal tax at December 31, 1918.

Q. Whatever taxes had—— 9633

A. Whatever taxes remained unpaid.

Q. Were they for 1918 or for previous years?

A. They were for 1918.

Q. That happens to be just for that year, does it?

A. Yes.

Q. In other words, were all personal property taxes paid except 1918?

A. Yes.

Q. The total interest on taxes applicable to gas business and total taxes and interest applicable to

9634 gas business, is that a summation of the figures going before; is that a mere addition?

A. That is a mere addition.

Q. And taxes and interest not applicable to gas interest; is that a mere summation or addition of the figures above that, where you say "add taxes and interest"?

A. It is not a summation of the figures above that.

Q. What is that?

A. It is a separation of the taxes and interest appearing in the ledger accounts as not applicable to
9635 gas business. In other words, the total taxes and interest appearing upon the ledger accounts is set out in the memoranda immediately below, and that portion of the total amount of taxes and interest which are segregated as being chargeable to the gas business, are set out in detail in this schedule. The balance of the amounts are shown in the item of taxes and interest not applicable to the gas business.

Q. The taxes, operating, is that a summation of all the taxes set up above?

A. That is the amount of taxes appearing upon
9636 the company's ledger, the operating ledger, at folio 1081.

Q. Whether paid or unpaid?

A. Whether paid or unpaid.

Q. The statement down here at the bottom is ——

A. That memorandum at the bottom is for the purpose of reconciling the amount shown on the ledger account with the details set out in the schedule preceding it.

Q. Why did you take off this over-accrual of 1918, Federal Income Taxes?

A. Because the total of the items shown above, 9637
amounting to $1,572,548.17, is a total which is based upon the amount of taxes appearing upon the ledger accounts in 1918, and includes the estimate which the company made for its anticipated Federal Income Tax, but which when the return was filed, was found to be reduced by the amount of $177,473.29.

Mr. Ransom: Do you mean that $1,572,548.17 included the estimate or seventeen forty-nine included the estimate?

The Witness: Seventeen forty-nine included the estimate. The $1,572,548.17 is after 9638
deducting the amount accrued in excess of the amount which they actually had to pay, and the Federal Income Tax is included in the amount of taxes and interest not applicable to the gas business.

Q. Those items at the bottom of the pages, taxes, interest on unpaid taxes, non-operating revenue deductions, miscellaneous operating revenue, are accruals pure and simple, are they not?

A. Yes, they are accruals.

Q. You found the Company paid an income tax for 1918, did you?

A. It is not included in the taxes—— 9639

Q. No, I am not asking you that. I see it is not, but you found they paid an income tax?

A. They paid an income tax in 1919. They made their return in 1919, and whether the full amount has been paid yet or not, cannot say.

Q. Was that for 1918?

A. That was for 1918.

Q. How about the year before; that is the payment they made in 1918——

9640 A. Are not charged against the expenses of 1918.

Q. No, I know that; I did not ask you that, but I asked you, you found they paid a large income tax?

A. Yes, sir.

Q. For 1917 and 1918?

A. Well, they paid an income tax.

Q. Where is that set up here?

A. The amount which they paid in 1918 on account of 1917?

Q. No, the amount they paid in 1919, on account of 1918?

9641 A. The amount which they expected to pay on account of 1918?

Q. Yes.

A. That is set up in the monthly accrual the same as for all other taxes. (Witness examines books.)

Mr. Chambers: While Mr. Teele is looking that up, we call on the complainant to furnish us as soon as possible the return to the Federal government, all their returns made to the Federal government for income taxes, the copies which they have, including the inventory, of course, on which they were based.

9642 Mr. Ransom: The situation as to that, I take it, is this. I assume that the representative of the Attorney General of the State is familiar with the provisions of law as to the making public of the return.

The Master: By whom?

Mr. Ransom: By anybody.

The Master: No, he is not familiar with any provision of law that does not exist. There is a provision of law that the Federal authorities cannot make public a list.

Mr. Ransom: It is a question whether we 9643
have got to make it public.

The Master: There is no doubt about it in the world. It is a question as to whether I shall order it.

Mr. Chambers: Yes.

The Master: What I am interrupting Judge Ransom for is to let him know that there is no statute that says they shall disclose it.

Mr. Ransom: Counsel for the complainant may be in disagreement on that question. So far as an examination of this return is concerned, we have no objection whatever to an 9644
examination of this return, or any of the returns, at the company's office by counsel for any of the defendants.

Mr. Chambers: Or their accountants?

Mr. Ransom: Or their accountants, to the extent if there are any of these returns to any of the tax authorities which counsel for the defendants or the experts of the defendants had not so far examined at the company's offices, they may now do so.

The Master: That is a disposal of that question. Let us get to the next point.

Mr. Ransom: But the income tax is not 9645
charged or attempted to be charged as a part of the expenses against the consumer.

The Master: Yes, I understand that and they understand that. What they want to do is to see what you set up as an inventory at the beginning and end of the year. Is it a consolidated return?

The Witness: As required by the Federal government.

9646 The Master: But it contains separate tables showing the different inventories.

The Witness: It is all shown together.

The Master: But it contains separate tables, too, under the regulations.

Mr. Ransom: What is the unanswered question?

Mr. Chambers: He is looking up something.

Q. Will you give me that now, Mr. Teele?

A. The amount accrued by the company during the year 1918, on account of Federal income taxes —I expect they are Federal income taxes—was
9647 $277,350.86, and that amount is included in the ledger account of accrued taxes on folio 1112, and it is made up of two separate amounts, $35,084.88, being included in journal entry No. 1198 on journal folio 427; $242,265.98 being included in journal entry No. 1200 on operating journal, folio 128, the two amounts aggregating $277,350.86 are posted to the credit of accrued taxes account appearing on ledger folio 1112.

The Master: What was the idea, the smaller amount is income and the larger is excess profits?

The Witness: I do not know why that split
9648 was made.

Q. You did not quite answer my question. I wanted to find out as against this accrual what taxes were paid. You have now spoken of the accrual of the Federal income tax. As against that accural what amounts were paid in 1917 and 1918?

The Master: No, you are talking now about a 1918 accrual of the Federal income taxes for that year. Do not let us get into 1917.

Mr. Ransom: I object to this question because it does not relate to any item which is

in any schedule prepared by the witness. We 9649
unfortunately are not able to make an income tax return which would be a basis for charges that would come within the category of expenses against the gas business.

The Master: It cannot do any harm.

Mr. Chambers: It is in his over-accrual of 1918, Federal income tax, $177,000.

Q. But the difference between the figures Mr. Teele stated and the amount of the over-accrual is the amount that they reported.

A. They made a consolidated return, and on that consolidated return there was a proportion of the 9650
total amount of income tax which they had to pay under the consolidated return, which was allocated to the Consolidated Gas Company, to pay, and this $177,000 represents the difference between the amount allocated to them to pay and the amount which they had set up as expecting to pay.

The Master: I will not permit any further questions on that. I think it is useless.

Mr. Chambers: I do not think it will do any harm to get what they paid in 1917.

The Master: It is not at all useful to us. You will have all the reports themselves, and you will get all the information you want from 9651
them.

Q. Did you include the excess dividends we were speaking of the other day—that was included in the gross earnings, wasn't it?

A. I beg your pardon?

Q. The excess dividends tax for 1918, is billed right on the gross earnings tax bill? Was that included in the gross earnings?

A. The gross earnings income tax is set up as a separate item.

The Master: Is that charged against operation?

9652 The Witness: It is not.

The Master: Then do not let us spend any more time on it.

Q. On page 18, Mr. Teele, down at the bottom you have an item "Gas transferred". That is found on 701 of the ledger, is it?

A. It is.

Q. For 1918?

A. For 1918, yes, sir. It is in the B ledger, Mr. Chambers.

Q. Where did you get that amount of—first of all, is that dollars the amount set after that?

9653 The Master: After what?

Mr. Chambers: After "Gas transferred".

A. Dollars.

Q. Where did you get that amount of 86,868,-103.16?

A. From ledger folio 701.

Q. Is it set up like that in the ledger?

A. What do you mean by "like that"? The amount appears on that folio.

The Master: That exact amount?

The Witness: That exact amount.

Q. What does that mean, gas transferred, sold to other companies?

9654 A. The account "Gas transferred" is an account kept in accordance with the uniform system of accounts, gas from other sources.

The Master: Account No. 617?

The Witness: Account No. 617.

Q. Is that gas received by the Consolidated from other companies?

A. It represents both gas received and gas delivered.

The Master: It represents the balance of that, does it?

The Witness: $6,868,103.16 represents a 9655
balance.

The Master: Against the Gas Company?

The Witness: Against the Gas Company.

Q. Did you inquire into the details of that account, gas transferred?

A. I did inquire into the details of it, and I have prepared a statement, an analysis of that account.

Q. Just tell us what you did do in regard to that, what was used?

A. I referred to vouchers and bills.

Q. Of the other companies?

A. Referred to in that ledger account. 9656

Q. For instance, you looked into the accounts of the Mutual Gas Light Company in so far as it related to this gas transferred, did you?

A. I referred to the bills rendered by the Mutual Gas Light Company against the Consolidated Company, which bills are referred to in that ledger account.

Q. But did you go back of the bills; for instance, the Mutual Gas Light Company rendered a bill to the Consolidated, did they not?

A. Yes.

Q. Or bills from time to time? 9657

A. Yes.

Q. For gas furnished?

A. Yes, sir.

Q. Or bills from time to time for gas furnished? Did you go back of those bills?

A. I did not, not for the purpose——

Q. To see whether they really did furnish the gas?

A. Not for the purpose of analyzing or verifying that account.

9658 Q. You started right in with the bill, treated that as being correct?

A. I examined the method by which the amount of gas exchanged between the companies was determined and the computations made for the purpose of making that determination.

Q. What did you examine?

A. For the purpose of analyzing this account, I referred to the bills rendered, which I charged into this account, or rather, which I credited to this account, and the vouchers drawn by the Consolidated Company, which I charged to this account.

9659 Q. Outside of the bills—the Mutual Gas Company rendered a bill to the Consolidated for gas furnished?

A. Yes.

Q. Outside of that bill, that piece of paper, what else did you examine? Can you tell us step by step all that you did to ascertain whether the Mutual Company furnished the gas or if you did not do anything in that regard, why, we would like to know?

A. Well, as I said, I examined the method by which the gas exchanged between the different com-

9660 panies was ascertained.

Q. Where did you find that method, and what was the method?

A. The computation and the method?

Q. The method?

A. I found it in the offices of the Consolidated Gas Company.

Q. And in these books in evidence?

A. The results are in these books.

Q. Yes, but the method is not here?

A. No, I don't know that you could put the 9661.
method upon the books.

Q. Well, how could you ascertain the method if it is not in some paper or some book?

A. It is in the records of the company.

Q. What records, for instance, so we could find it?

A. Why, the records kept in the accounting department of the Consolidated Gas Company.

Q. Well, Mr. Teele, that is awfully indefinite. Was it in the operating ledger or the cash book or the text book or what?

A. I told you it was not in the books; it would be 9662
hard work to put a method in the books.

Q. Well, tell us now what you did find?

A. I found a computation made by the accounting department of the Consolidated Gas Company, by which they determined, or there is determined the amount of gas exchanged between the different companies.

Q. How did they do that?

A. Well, starting with the gas delivered, that is, the send-out of the respective companies——

Q. That must have been measured by somebody —the Mutual sends out into the—shoots into the pipe of the Consolidated Gas Company some gas. 9663
How did you find out how that was measured, and who by, and where? Or did you find that the Consolidated took the word of the Mutual for it that they had put so much gas in their holders and mains?

A. That is based upon the reports of the send-out of gas which is in the office, in the accounting department of the Consolidated Gas Company.

Q. You mean there is a report there by some special superintendent of the gas?

9664 A. I mean there are reports of the send-out of the respective companies.

Q. Oh, then, the Mutual reported how much they sent out?

A. All of the companies report how much they send out, because under the method of determining the amount of gas exchanged between the different companies, it is necessary that they should have first the gas sent out by all companies.

Q. And then they assume what they did not use the Consolidated had?

A. No, no, they do not.

9665 Q. Well, go ahead and see whether you can make me understand it.

Mr. Ransom: I think—I have this to say your Honor. If your Honor feels that it would be well to have this witness explain all this, I will state I am willing to permit this witness to be interrogated. This witness has submitted here a tabulation which, so far as this item is concerned, is wholly and exclusively from an entry in the books, to which he has directed attention.

Mr. O'Brien: I object, your Honor——

The Master: Let Judge Ransom finish.

9666 Mr. O'Brien: He is testifying, your Honor.

The Master: Let Judge Ransom finish.

Mr. Ransom: The questions which are now being put to this accountant, are questions in a field of operations. So far as this witness' knowledge goes, I am entirely willing, if your Honor thinks it is helpful, to have him give a narrative of what he found.

The Master: Here is the situation. This witness is attempting to prove a tabulation of the books, and I have ruled several times that before he can put in evidence that tabulation,

he must be prepared to say that the books are, 9667
in his judgment, correct. He can't very well say that the books with respect of the exchange of gas are correct, unless he knows how it was done, and what he arrived on in arriving at that conclusion. I am going to let him be interrogated on that point.

Mr. Chambers: And then, if the Master please, I had more in mind to show that he used extraneous papers or other reports in preparing his estimate.

The Master: I have allowed your question. Proceed. 9668

Mr. Ransom: So far as this item here, he used nothing except the book figures, absolutely nothing. In verifying it, he used other data.

The Master: Before I will let him use the book figures, I want him to satisfy me that he used some reasonable examination to satisfy himself he could use these book figures. If he took the book figures without satisfying himself as to their accuracy or probable accuracy, I want to know.

Mr. O'Brien: What I was going to object to when I started to object—— 9669

The Master: I have ruled on your question

Mr. O'Brien: Will your Honor bear with me for a minute?

The Master: We have only got three minutes more.

Mr. O'Brien: When a witness is up on the rocks, so to speak, counsel, under the guise of an objection, comes in to testify. Now, that practice I am going to condemn as I go along through the case.

The Master: Yes, and then you and I will do it when we try a case.

9670 Mr. O'Brien: I think he ought to make his objection and not, answering an S. O. S., hand the answer to the witness.

Mr. Ransom: Mr. O'Brien has testified more than any witness in this case.

The Master: Go ahead.

Q. Mr. Teele, without meaning to flatter you, you are an intelligent man. Now, tell us from beginning to end, just what you did in that regard?

A. I went back in the company's accounting department to find out the method by which they ascertained the amount of gas exchanged between
9671 the companies, and I found there records showing the send-out of the various companies.

Q. For the year?

A. Yes, for the year 1918, and I found that the method of determining the amount of gas exchanged between the companies was to take the total amount of send-out of all companies, and take from that send-out the total amount of gas measured by the respective companies, that is, through their consumers' meters and through the meters of the companies, showing the amount of gas that was used, and the difference between the amount of gas so
9672 measured by the companies, and the total send-out constitutes a quantity of unaccounted for gas which the engineers of the company ascribed to losses from different causes, and that lost gas is apportioned to the respective companies on two different bases. The total amount of unaccounted for gas which is calculated by the engineers to be chargeable against each one of the companies is added to the amount of consumed or measured gas, and that is determined to be the requirements of each company. Now, as against that requirement is compared the amount of the send-out of each company, and if the company's send-out is equal to the

amount—is less than—if the amount of the send-out 9673
is equal to the amount of the requirement, or is less than the amount of the requirement, then the company must have obtained its requirements from some other company, and if its send-out is in excess of its requirement, then the amount of gas which has been sent out by a company and which has not been used or which has not been required by that company itself, has been exchanged or delivered to some other company, and by striking a balance between the companies, they determine the amount of gas exchanged between the companies.

9674

The Master: We have heard all about that plan, but did you look into the plan and inform yourself about it from the records of the company?

The Witness: I referred to the report made to the Consolidated Company from the accounting department, by which such determination is made.

The Master: And you relied upon——

The Witness: And in my opinion——

The Master: Without giving your opinion, you relied upon the engineers' estimates of 9675
leakage and other losses?

The Witness: I relied upon the engineers' estimates placing the unaccounted for gas, and also upon the engineers' plan, which is followed.

Q. You relied also upon the reports made by the other companies as to how much they made?

The Master: And how much they used?

The Witness: Yes.

Recess until 2.45 P. M.

9676 AFTERNOON SESSION.

2:45 P. M.

GEORGE E. WOODS, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Woods, what is your position with the Consolidated Gas Company?

A. Assistant Chief Engineer and Engineer of Manufacture.

Q. How long have you been connected or em-
9677 ployed by the Consolidated Gas Company?

A. Since 1901.

Q. In what capacity were you first employed by the Consolidated?

A. Engineer of Manufacture.

Q. Do you hold at the present time any relation to any other gas company?

A. I do.

Q. What one?

A. The Astoria Light, Heat & Power Company, of which I am Assistant Chief Engineer and Engineer of Manufacture; the Standard Gas Light Com-
9678 pany, of which I am Chief Engineer; the New York and Queens Gas Company, of which I am consulting engineer.

Q. What is and has been the scope of your duties and functions in respect to the plants of the Consolidated Gas Co.?

A. Such duties as would apply to the duties of an engineer of manufacture in the operation of the manufacturing plant.

Q. That is, you are the responsible head of the operation of the gas plant?

A. I am reporting to the Chief Engineer of the 9679
Company.

Q. How old are you?

A. Forty-nine.

Q. What has been your experience and training in connection with the gas business from the time you started in in that field up to the present time? Where did you start in the gas business?

A. Evansville, Indiana.

Q. When?

A. In 1884.

Q. What was your capacity there, and what was your general scope of duties and activities? 9680

A. I left high school in March, 1884, to accept a position with the Evansville Gas Company for the purpose of learning the gas business, and I was with that company for five years, during which time my duties were such as would apply in five years operation, in which I directed the plant, did various and all kinds of things at the plant, as a man would do in a small company—laid mains, laid services.

Mr. O'Brien: Well, you were a boy then, Mr. Woods?

The Witness: I was a boy. I was a boy 9681
then.

Mr. Chambers: Fourteen years old?

The Witness: Fourteen years old.

Q. How old were you when you started with the Evansville Gas Company?

A. Fourteen years of age.

Q. And you were with the Evansville Company until you were nineteen?

A. Until I was nineteen.

Q. And were you connected with all or merely

9682 some of the departments of gas manufacture and distribution?

A. In the Evansville Gas Company I was connected before I left there with every department.

Q. You went through every department of the business?

A. I did.

Q. So far as the manufacture and distribution and the like were concerned?

A. I did.

Q. At the end of five years you left the Evansville Company. By the way, what kind of a plant
9683 did they have, natural, water or coal gas?

A. Coal gas.

Q. Then you went from Evansville where?

A. Detroit, Michigan, as assistant superintendent of the Detroit Gas Company.

Q. That is assistant superintendent of the manufacturing plant?

A. Of the manufacturing plant.

Q. How long were you with the Detroit Gas Company?

A. For three years.

Q. What were your duties there?

A. Such duties as apply to an assistant super-
9684 intendent of manufacture, in which I had charge of both operation and construction at the plant, which plant at the time was a coal gas plant, and during my period of employment with that company we also installed water gas apparatus.

Q. So that in Detroit you had both coal and water gas apparatus?

A. That is so.

Q. And you had charge of manufacture and of operation generally?

A. I did.

Q. Then from Detroit, where did you go, after your three years' experience with the Detroit Gas Company? 9685

A. I went to Little Rock, Arkansas, as Secretary and Manager of the Little Rock and the Pulaski Gas Company and the Little Rock Light & Power Company.

Q. Describe what your duties were there?

A. My duties there were such duties as would apply to a manager, looking after both the operation of the plant, which was a combined coal and water gas plant, although they were making water gas when I went there; looking after the street 9686 work and keeping the general books of the company.

Q. You looked after the general management of the enterprise?

A. I did.

Q. Did you personally during that period keep the books of account of the company?

A. I did.

Q. That is, its books of operation, both of expenses and revenues, were personally kept by you during that period?

A. That is correct. 9687

Q. And after you left Little Rock where did you go?

A. I accepted a position with the Standard Gas Light Company in the City of New York as Assistant Engineer, where I was in charge of the street work, and as assistant at the plant.

Q. When did you come to New York?

A. In May, 1892.

Q. And your title with the Standard Gas Light Company was assistant?

9688 A. Assistant Engineer in charge of the street work and as assistant in the operation of the plant.

Q. That is, you were in charge of street work and you were assistant in the manufacturing plant?

A. That is so.

Q. Will you describe your duties and your work in your direction of the street work?

A. Well, during my connection with the Standard Company from 1892 to 1900, in the matter of street work, under my direction and practical supervision we laid about forty per cent of all the mains that the Standard Company has at the present time. I
9689 also had charge before I left there—understand, I went as Assistant Engineer, in 1892, and in 1896 I was made Chief Engineer of the company.

Q. Yes.

A. During my connection with the company I had charge both of the operation and construction work right at the plant, looking after it, making plans, drawings, getting specifications, bids, and so forth for that work.

Q. In connection with your duties of direction and supervision of the street work, are you able to give any figure as to the approximate number of mains, miles of mains that were laid under your
9690 direction?

A. Somewhere between seventy and eighty miles.

Q. And that work was under your direct charge, and you were the chief of that department?

A. I was.

Q. And you obtained bids?

A. I did.

Q. And personally supervised the doing of the work?

A. That is correct.

Q. You passed on materials?

A. I did. 9691

Q. Vouchers?

A. Yes.

Q. Bills for preliminary payments and certifications for final payment, and the like?

A. I did.

Q. During this time, after you went to the Standard, you also were assistant in the manufacturing department, that is, assistant at the works?

A. I was when I first went with the company.

Q. How long before you become chief, so far as manufacture was concerned?

A. In 1896 I became chief engineer. 9692

Q. In 1896 you became chief engineer?

A. Of all of the mechanical departments of the company. In 1898 I was made general manager.

Q. And how long were you general manager?

A. Until 1901, when I came to the Consolidated Gas Company.

Q. Your duties first, as assistant at the works, and later as chief engineer, did that include construction both of buildings and installation of apparatus?

A. It did.

Q. And you had charge of the selection of apparatus and passed upon prices? 9693

A. I did.

Q. And costs, vouchers and the like?

A. I did.

Q. What were your duties as general manager?

A. I had charge of the departments of the company, both the manufacture, distribution and the offices and reported to the President.

Q. In connection with your street department work and your duties as chief engineer, did you

9694 have charge with respect to labor—the hiring of men and the like?

A. I did.

Q. And you had direction of all labor forces of the Company?

A. I had.

Q. And during your service as general manager, you had charge of any business operations of the company on the gas side?

A. I did.

Q. During this period of your connection with the Standard, was the Standard in any way one of
9695 the affiliated companies of the Consolidated system?

A. Not until about 1900, I think.

Q. In what year, then, were you employed by the Consolidated?

A. In March, 1901.

Q. That is, in March, 1901, you became engineer of manufacture of the Consolidated?

A. That is correct.

Q. And did you retain your position as chief engineer of the Standard?

A. I did.

Q. And have you since retained it?

9696 A. I have.

Q. Are you a member or officer of any technical association? If so, what?

A. I am a member of the American Gas Association, the Society of Illuminating Engineers, Society of Mechanical Engineers, Society of Gas Lighting; I am also President of the Society of Gas Engineers of New York City.

Q. What studies have you made of the manufacture of gas and the operation of plants and their construction, and so forth, outside of the work

which you did for the various companies, which you have described? 9697

A. I think I have been making a study both in theory and practice for thirty-five years, Judge.

Q. Well, in what way?

A. By the study of text books, technical journals, travel, conversations with men that knew more about things than I did.

Q. Have you visited works from time to time in various part of this country?

A. I have.

Q. The principal plants of this country?

A. Most of them. 9698

Q. To what extent have you visited the various works abroad?

A. I have visited most of the larger plants abroad.

Q. Will you mention some of the cities abroad in which you have visited the plants?

A. I visited the larger plants in England, Manchester, Liverpool, Sheffield, London, and some of the smaller plants where they have some particular type of apparatus, in Germany, Berlin, Munich, Cologne, Brussels, Koenigsburg and——

The Master: I will let the other side cross-examine and see if there is any question about his qualifications. 9699

Mr. O'Brien: I assumed at the beginning that he was presented as a witness on concrete facts.

The Master: Apparently they are qualifying him as an expert. I will let counsel for the defendant make any further examination they want to. The Master feels that on the testimony so far taken, Mr. Woods is qualified as an expert on gas making and main laying and

9700 street work, and if there is any question in the minds of counsel for defendants, I will let them ask any questions they want. Any questions, Mr. Chambers?

Mr. Chambers: No.

The Master: Any questions, Mr. O'Brien?

Mr. O'Brien: Yes.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. You held several positions at the same time, one consulting to the New York and Queens, Chief Engineer of the Standard and Engineer of Manufacture for the Complainant Company?

9701 A. Yes.

Q. You drew salaries from each one of those companies?

The Master: You need not answer that. It does not bear upon his qualifications as an expert. I am permitting a cross-examination as to qualifications as an expert.

Mr. O'Brien: Well, this will show bias, your Honor.

The Master: This is not the time to show bias.

Mr. O'Brien: I know, but I think it has quite a serious bearing.

9702 The Master: It cannot bear on the qualifications. I may be the most qualified lawyer in the world and be the darndest liar that ever lived. Is he qualified?

Mr. O'Brien: Well, a man is called upon for an expert opinion; my contention is that if there is enough there to establish bias and there is a biased mind, that he ceases to be an expert.

The Master: No, he still remains an expert. He may be biased and prejudiced, and perhaps

worse than that, but he still remains an ex- 9703
pert. Most experts are liars when they are called as experts, and especially if they are paid to testify to particular facts.

Mr. O'Brien: Well, of course, your Honor will permit me to make a record any way.

Mr. Ransom: I don't know whose expert you are looking at.

The Master: I am not looking at any, but I am talking now about experts who are hired to testify and give opinions as to facts at issue. I did not intend by anything I said to refer to the employees of the Gas Company 9704
who are called here, or necessarily to any witnesses who are called here.

Mr. Ransom: Mr. Woods is the only expert in the room who is not hired to give testimony.

Mr. O'Brien: He is in the crib, I notice, and has been for several years—some twenty years.

The Master: There are some witnesses who are perfectly sincere in their testimony, and are prejudiced only to the extent they are paid by one side or the other, and there are others that are just plain liars about it. The only questions now, Mr. O'Brien, is is Mr. Woods an 9705
expert?

Mr. O'Brien: I appreciate that.

The Master: Is there any question you want to ask him on that?

Mr. O'Brien: I just want to make a record, and I want to ask him——

The Master: Objection sustained.

Mr. O'Brien: What his salaries were, if he was drawing down three salaries, and what these salaries were.

9706 The Master: Objection sustained.

Mr. O'Brien: And I note an exception to your Honor's ruling.

The Master: Next question.

Q. How much time do you devote to each company at the present time?

Mr. Ransom: I object to it at this time.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. You are not a graduate of any technical school?

A. I am not.

9707 Q. So far as educational institutions go, and apart from the university of experience, you have not had any schooling since the high school training in Evansville?

A. No, not direct schooling except from my own personal study

Q. And what was your work in Detroit?

A. I was assistant superintendent of manufacture.

Q. That was not the only plant in Detroit, was it?

A. There were two companies at that time.

Q. How big a plant was it?

9708 A. My recollection is—it has been quite a long time ago—I think we made about a million and a half cubic feet a day at that time.

Q. How long did you stay with them?

A. Three years.

Q. Did you leave or were you asked to leave?

A. I left.

Q. And then you went to Little Rock?

A. I did.

Q. And that was a little plant? Little Rock was not a very large city at that time?

A. No. 9709

The Master: How many years ago was that?

The Witness: I went to Little Rock in 1891, I think.

Q. And you were there how long, Mr. Woods?

A. About seven months.

Q. If it is not too personal might I ask how you came to leave there?

A. It is rather an amusing story if you care to have me tell it.

The Master: No, I have had one amusing story to-day and I don't care for another one. Do you want to ask anything more about his 9710 qualifications?

Q. At any rate, it was a short life and a merry one at Little Rock?

Mr. Ransom: I object to the form of the question. We want an answer. We cannot fill this record with insinuations and not have the answer.

The Master: All right, counsel for complainant wants the answer and the Master does not.

Q. You left your employment at Little Rock after seven months?

A. I did.

The Master: Next question. 9711

Q. Then you came to New York?

A. I did.

Q. How old were you when you first came to New York?

A. Twenty-two.

Q. Did you work at anything else before you went to the Standard Company?

A. No, sir.

Q. And you entered their employ in the street department?

9712 A. In the street department and as an assistant at the works.

Q. Well, you didn't call yourself assistant superintendent at that time, did you?

A. Assistant superintendent was my title.

Q. On the pay roll too?

A. On the pay roll too.

Q. How much money did you get?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: I may state, your Honor, that these very questions were indulged in in many rate cases.

9713

The Master: I have told you before that I am going to rule as it appeals to me, not as it appealed to some other judge or referee.

Q. What kind of work did you do for the Standard in the first year you went with them?

A. Such duties as devolved upon a man who is the assistant superintendent——

Q. That is the expression that you gave all the way through the examination as to your duties, you always said such work as would be applied in that position. Just tell me what you did. Were you a foreman in the street department, or did you

9714 have charge of foremen?

A. I had charge of them. I said I had direction and supervision of the street department.

Q. Complete supervision of the street work?

A. I did.

The Master: The foremen were under you?

The Witness: They were.

Q. These foremen were all your senior in age, were they not?

The Master: Objection sustained.

Q. Did you draw plans for the erection of buildings at that time? 9715

A. I did.

Q. You had an idea of draftsmanship?

A. I did.

Q. Where did you acquire that?

A. Where I have acquired most of my knowledge, from study, Mr. O'Brien, and in the gas business for thirty-five years. For your information I would say——

Q. Now, let us get that.

Mr. Ransom: I object, let him finish his answer.

9716

A. (Continued.) I drew plans for complete works when I was eighteen years of age, and afterwards operated that plant during the winter.

Q. Where was that?

A. Paducah, Kentucky.

Q. You didn't mention that in your direct-testimony as to your career, did you?

A. It was only a three months' operation.

Q. But the plant was not a three months' plant, was it? It was used afterwards?

A. I suppose it is being used today.

Q. Why didn't you mention that in your direct testimony? 9717

Mr. Ransom: I object to the question.

The Master: Well, let us have the answer.

Mr. Ransom: I have not completed my questions of this witness.

The Master: Maybe that is the answer.

A. Simply because it did not enter my head at the time, I suppose.

Q. You did not consider it important?

A. Permit me to tell you that I was employed at that time by the Evansville Gas Company, and

9718 the engineer of the company, the superintendent, had the job, received the job to build a plant in Paducah, Kentucky, and under his supervision and direction I made all the drawings for that plant.

Q. As a boy fourteen?

A. As a boy eighteen.

Q. And they followed your plans and put up the plant in accordance with them?

A. Absolutely, and I operated the plant.

Q. Well, they asked you to operate your own plant I suppose?

A. I operated it because some older man than
9719 myself could not operate it, and I was sent down there to do it, and I did it satisfactorily.

Q. To yourself?

Mr. Ransom: I object to this line of examination as to qualifications.

A. I will say that when I was eighteen years of age, in the absence of the superintendent when abroad for three months, I was in sole charge of the plant, at eighteen.

Q. In Evansville?

A. In Evansville.

Q. Who was that superintendent?

A. His name was Isaac C. Baxter, whom I fol-
9720 lowed and went with. He is engaged as engineer of the Detroit Gas Company, and he was with the Detroit Gas Company one week when he telegraphed for me to come and be his assistant.

Q. You were then an understudy of Mr. Baxter?

A. I was.

The Master: You learned your profession from Baxter?

The Witness: I served eight years with Baxter.

The Master: And you learned a great deal from him? 9721

The Witness: A great deal.

Q. What was the output of the Evansville plant when you were there?

A. I think about forty million a year, forty to fifty million a year, that is my recollection, at this time. It was comparatively small to what they are doing now.

Q. When you spoke about Paducah, and your planning a building there, what sized building was it?

A. I designed a retort house, and purifier house, and meter house, and the offices, a complete works. 9722

Q. You modeled it after the Evansville plant?

A. Why, no, it was a smaller plant.

Q. You took the plans and reduced them, did you?

A. Oh, no, the buildings were absolutely different in size. The construction was probably much the same.

Q. Mr. Baxter went over the plans after you had passed them?

A. Oh, yes.

Q. The contract was his, was it not?

A. The contract was his, and I did this work under his direction. 9723

Q. How many foremen were under you in the Standard Company when you first went there?

A. All the foremen they had.

Q. Well, they must have had a number of foremen when they built—how many miles of mains under your jurisdiction?

Mr. Chambers: Seventy or eighty.

Q. Seventy or eighty miles of mains. How many

9724 of them were built that first year, if you can recall?

A. I would not undertake to.

Q. Can you not approximate it?

A. I would not undertake to say how many the first year.

Q. Can you say how many foremen were there when you were in charge of them?

A. Whatever they were, whether there were two, ten or twenty, I had charge of them, I will tell you that.

Q. Can you say approximately how much work
9725 was done that year in that department?

A. The first year I do not think much work was done, Mr. O'Brien.

Q. Well, the second or third, as you remember it now?

A. I do not know; the first or second year there was comparatively very little work done, the first or second year, because there was some trouble in getting permits, so we were delayed and held back in the laying of pipe at that time. There was some franchise trouble that took a year or two to straighten out, and I think it was probably two years after my connection with the Standard Gas
9726 Company that they did very much main laying.

Q. Then most of that work was done around the works, and you were assisting around the works?

A. I was assisting around the works with such minor work as was being done on the street.

Q. Who was the superintendent of works at that time?

A. A man by the name of George H. Weeks.

Q. Is he still with the Standard Company?

A. He is not.

Q. Was Mr. Addicks connected with the Stand- 9727
ard Company at that time?

A. To my knowledge he never was connected with the Standard Gas Company.

Q. Where was their plant at that time, and how extensive was it?

A. Just where it is to-day, at 115th street and the East River.

The Master: What was the output or capacity?

The Witness: Why, the output, I suppose, when I went there was possibly three and a half or four million cubic feet a day. 9728

Mr. Ransom: How much was there when you left?

The Witness: About the same as it is to-day, ten and a half million.

The Master: In other words, it grew from three to four million to ten and a half million while you were with them?

The Witness: In my connection with the Standard Gas Company, they were using what we were calling the Flannery process.

Q. Is it not a fact that Mr. Addicks and Mr. Flannery built that plant?

A. Neither Walter R. Addicks or J. Edward 9729
Addicks, I don't think, ever had a thing to do with the Standard Gas Company.

The Master: That is his best judgment.

Q. You do not recall that he was associated with Mr. Flannery?

A. Who, W. R. Addicks?

Q. Yes.

A. I do not think W. R. Addicks was.

Q. Not W. R., but his brother.

A. J. Edward Addicks was, because Mr. Flannery

9730 was the one who put in the plant in Boston, and in that connection he was connected with J. Edward Addicks.

Q. Just think back and see if he was not connected with him when he put in the plant at the Standard?

The Master: No, I will not allow that.

Mr. O'Brien: Before we get far with this witness, your Honor, we are going to be depending on his memory. These things go to make up an expert, particularly where he is going to cast his mind back and give us some judgment predicated on facts of other data as he remem-

9731 bers them. If his memory is defective his judgment is going to be defective.

The Master: Objection sustained.

Q. When they did begin to extend the street department, that is to lay mains, you continued in the same capacity, did you, or did you finally become superintendent of the street department?

A. I became Chief Engineer of the company in 1896.

The Master: Which included both departments?

The Witness: It included both departments.

9732 The Master: Did you have superintendents under you in both of those departments?

The Witness: I did.

Mr. Ransom: He has been in charge of the street department since the time he went there.

The Master: I understand that, but beginning in 1896 Mr. Woods testified he became Chief Engineer and had under him the superintendence of streets and superintendent of works.

Q. Did you have them under you or did you com-

bine the two offices in one after you became chief 9733
engineer?

A. No, we had a superintendent for each.

Q. And was there any great extension of the plant during your time with the Standard Gas Company?

The Master: He said from three to four million to ten and a half million.

Mr. O'Brien: I am asking about the physical plant now.

Q. Were there any buildings erected?

A. There were.

Q. Where? 9734

A. At 115th Street and East River.

Q. What buildings were erected in your time?

The Master: Objection sustained.

Mr. Ransom: I am perfectly willing if he goes into that.

The Master: I shall rule this witness is qualified. I think the cross-examination has gone far enough. Haven't you shown he is qualified?

Mr. Ransom: He is not merely an expert, but this man is the expert in his field. He is the best man in this country.

The Master: I don't care whether he is the 9735
best man in the country, he is qualified to testify in this case.

Mr. O'Brien: Will your Honor bear with me just two seconds? Judge Ransom has presented him as an expert. He did not say of what. We don't know now whether he is to be called upon to give expert testimony in the field of distribution, on the commercial side——

The Master: I will take him on either one.

9736 Mr. O'Brien: You are going to take him anyway?

The Master: Yes.

Mr. O'Brien: I mean in any capacity?

The Master: Either for distribution or manufacture.

Mr. O'Brien: Or for buildings? He may be qualified in one line and not on another.

The Master: I am assuming he is being called for the purpose of testifying as to manufacture and distribution, and I am going to rule that he is qualified for that purpose.

9737 Mr. O'Brien: Well, of course, that, if he is not offered as an expert on building and equipment——

The Master: Well, equipment would include his manufacturing experience.

Mr. O'Brien: We will refrain from asking him questions along that line.

The Master: And as the chief engineer and engineer of manufacture, he would necessarily be familiar with equipment, and I shall so rule.

Q. Mr. Woods, have you ever worked for anybody
9738 other than a gas company?

A. I never have.

The Master: My experience has been, Mr. O'Brien, that when a man like Mr. Woods is called, it is a waste of time to challenge qualifications. He is bound to qualify.

Mr. O'Brien: My experience is, you will find a lot of things sometimes, most unexpectedly, your Honor.

The Master: Not with a man like Mr. Woods, who is the chief engineer of the Consolidated

Gas Company, turning out some 14,000,000 9739
cubic feet a year, or handling it; you are never going to break down his qualifications. The Consolidated Gas Company is not employing a man unless he is qualified.

Mr. O'Brien: I know, but we can't build up a house of cards in the shape of presumptions.

The Master: I have ruled on it.

Mr. O'Brien: What I want is the fact that it was not stated just in what capacity the witness was offered.

The Master: I am ruling now that I shall use his testimony as an expert, familiar with 9740
the manufacture and distribution of gas and all the appliances and equipment and mains and general apparatus that that subject covers, that most subjects cover. If he gets into the realm of testifying to the value of buildings or structures, I will take it up with you.

Mr. O'Brien: I note an exception to your Honor's ruling, and particularly upon the ground that the witness has not shown himself to be qualified, that the record only discloses the fact that he has been in the employ of gas companies for a number of years, and that he 9741
has been in the employ of the plaintiff company for a large number of years, and there is no qualification shown except the presumption which your Honor says would lie by reason of the long service with that company; further that he has not shown or demonstrated either through technical knowledge displayed upon the stand, or through his connection with technical work upon the subject of gas making or through his memory of the history and devel-

9742 opment of the gas making industry, shown in his direct testimony any qualifications which go to make up an expert.

The Master: Proceed with your direct-examination on the matters that you called him for, Mr. Ransom.

Mr. Ransom: In view of the nature of Mr. O'Brien's objection, there are two or three other questions along that line that I do want to ask.

The Master: I won't permit you to ask them.

Mr. Ransom: Exception. I desire to

9743 show——

The Master: The Master is satisfied beyond any question, and the record will clearly bear out the Master's judgment, that this witness is qualified to testify upon matters relating to the manufacture and distribution of gas.

Mr. Ransom: Including the purchase of material for both manufacturing and distribution and mains and apparatus and the like?

The Master: Yes.

By the Master:

Q. You are the chief engineer of this company, are you not, Mr. Wood?

9744 A. Assistant chief engineer and engineer of manufacture.

Q. Assistant chief engineer and engineer of manufacture?

A. Yes.

Q. An assistant engineer has to do with distribution?

A. He has.

Q. That comes under your supervision?

A. Only at times.

Mr. Ransom: He is chief engineer of the

Standard, he is engineer of manufacture of the 9745
Consolidated, and he is assistant chief engineer of the Consolidated, and in both of those capacities——

Mr. O'Brien: Get in the New York and Queens too; don't forget them.

Mr. Ransom: He is consulting engineer of the New York and Queens.

The Master: And the more of those companies that he acts in official capacity for, the more I am inclined to believe he is qualified, or they would not hire him.

Mr. O'Brien: That works three or four dif- 9746
ferent ways, your Honor.

The Master: A man is not employed in those capacities by big manufacturing concerns unless he is qualified to hold those jobs.

Mr. Chambers: Well, they are all one.

The Master: Go ahead, Judge Ransom. I have ruled on it.

DIRECT-EXAMINATION RESUMED BY MR. RANSOM:

Q. Have you at various times in the course of your experience purchased material used in the gas business?

A. I have.

Mr. O'Brien: Is this further qualification? 9747

Mr. Ransom: It is leading up to certain things.

The Master: I will allow it. Judge Ransom has certain questions that he hates to pass up.

Q. Have you kept in touch with market prices for those materials?

A. I have.

Q. And with the costs of operation and construction?

The Master: What do you mean, of buildings?

9748 Mr. Ransom: Of gas apparatus, structures in connection therewith.

The Master: Well, are you going to prove by this witness the value—his expert opinion of value of structures as distinguished from apparatus and plant?

Mr. Ransom: I don't believe that at this time I am. I consider him fully qualified as to that.

The Master: Well, I wanted to know whether this witness was called for that purpose. If so, I shall, of course, expect you to qualify him as an expert as to building material and the
9749 cost of building operations, which is an entirely different thing from manufacture.

Mr. Ransom: Except in connection with apparatus, insofar as structures become virtually part of apparatus in this business.

The Master. Go ahead and ask your questions.

The Witness: In a general way, yes.

Q. Well, as chief engineer of the Standard, you have charge of construction expenditures?

A. I do.

Q. Do you keep informed as to the cost of such
9750 construction as that company requires?

A. I do.

Q. And does knowledge as to costs also come to you through your employment from time to time in connection with the work in other plants concerning which you have been consulted?

Mr. O'Brien: I object to that as a conclusion.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Are you from time to time consulted by other

companies in other parts of the country with re- 9751
spect to particular problems of construction and operation?

Mr. O'Brien: Same objection, your Honor. I object particularly now upon the ground that we were supposed to have finished the witness' examination into his qualifications and it was on that theory that your Honor shut me off from further questioning as to his qualifications.

Mr. Ransom: I want to show this witness' knowledge not only with respect to operating costs, and the costs of material in this city as 9752
to the Consolidated and the Standard and the Astoria and the New York and Queens, but this witness' knowledge of similar problems and similar costs in other cities, where he is called in from time to time as consulting engineer.

The Master: Go ahead and ask the questions. I may allow further cross-examination to Mr. O'Brien.

The Witness: I am, but I do not make a general practice of doing that work.

Q. Well, what companies have you been consulted by in such a connection? 9753

A. The Peoples Gas Light & Coke Company of Chicago.

Mr. O'Brien: In what respect?

Q. Is that a very large company?

A. It is.

Q. How does it rank among the companies of the country?

A. I think it is about second largest in the country, the Consolidated being the largest.

9754 Q. What other companies have you acted as consultant for along those lines?

A. The Baltimore Gas Company; Providence, Rhode Island; Dallas, Texas; Williamsport, Pennsylvania.

Q. Now, in connection with your——

Mr. O'Brien: You have examined their plants, Mr. Woods?

The Master: Don't interrupt, Mr. O'Brien?

Q. In connection with the advice and counsel which you have given in those capacities, have you from time to time ascertained the cost of operation

9755 and construction and the like?

Mr. O'Brien: Your Honor, I am going to object here. That is objectionable on many grounds, and he calls for a conclusion. It involves conclusions as to costs, all of which are deductions and matters of opinion.

The Master: It is a question of whether he ascertained costs, costs of operation. I will allow it.

Mr. O'Brien: Exception.

The Witness: I did.

Q. And have you also kept yourself informed as to the cost of labor in the various plants of the Con-

9756 solidated and other companies?

A. I have.

Q. As to the methods and results—operating results in the case of other companies in the city of New York in the Gas business, not in any way affiliated or identified with the Consolidated Company?

A. I have.

Q. Well, in what companies, for example?

Mr. O'Brien: That is better. We will find out about the affiliations. That is better.

Q. What companies, for example? 9757

A. Well, the Brooklyn Union Gas Company, for instance.

Mr. O'Brien: You say that is not affiliated with the Consolidated Gas in any way?

The Master: Don't interrupt, Mr. O'Brien. What other companies?

The Witness: I think that is the only company in New York, outside of the Consolidated system.

Q. Well, how do you keep in touch with the data of operation as to that Company, for example?

A. I make an analysis of their records from time 9758 to time.

Q. Are you in touch from time to time with that Company's engineer?

A. I am.

Q. Referring to the matter of the revenues of the Consolidated Gas Company as to the 48 inch connecting mains in Manhattan and Bronx, 36 inch distributing main in the Bronx, the land, holder and accessories at Kingsbridge, have you, Mr. Woods, made any investigation for the purpose of fixing the charges of the Consolidated for the use of those facilities?

Mr. O'Brien: Your Honor, before you reach 9759 that testimony about concrete facts, I would like to ask some questions as to the matters which Judge Ransom has attempted to qualify him in, in addition to an expert on manufacture and distribution.

The Master: I will let you ask them as part of your main cross-examination.

Mr. O'Brien: Then it is assumed I am objecting to his qualifications?

The Master: Yes.

The Witness: I have.

9760 Q. Were any of those constructed since you entered the employ of the Consolidated?

A. They were.

Q. Which ones?

A. The 48 inch main in question, running from the 71st street tunnel in Manhattan to the Bronx tunnel, up to 132nd street and East River, that particular main was laid since my connection with the company; the 30 inch main in question was never laid; the 30 inch main in question is, in reality, a 48 inch main, but the requirements of the Central Union Gas Company are for a 30 inch
9761 main leading from the Central Union Works to the Kingsbridge Holder, and the charge made to the Central Union Gas Company was for a main 30 inches in capacity, a 30 inch diameter main, and the charge to them was based as if it were a 30 inch main instead of a 40 inch main, the difference being carried by the Consolidated Gas Company for their purposes for the use of distribution at the Kingsbridge holder. The Kingsbridge holder has a capacity of ten million feet.

Mr. O'Brien: This is a long story, your Honor.

Q. Was the Kingsbridge holder built since you
9762 became connected with the Company?

Mr. O'Brien: I move to strike that answer of the witness out, the answer which the witness has just given, as not responsive.

The Master: I will allow it. It is usually the examining counsel who complains that the answer is not responsive. I will allow it. It cannot do the defendants any harm. They may still cross-examine.

Mr. O'Brien: Well, except that there is a little—the answer is confusing.

The Master: Well, the same matter can be 9763
brought out in another question, and there is no sense in striking it out as not responsive. The answer is not confusing at all. There are apparently some charges made against the Central Union Gas Company for the use of a 30-inch main in the Bronx, and the witness has explained it is not a 30-inch main, but simply it is a 48-inch main, and charged on the base of 30 inches to the Central Union.

Mr. Ransom: The rest used by the Consolidated.

Mr. O'Brien: What I had in mind particu- 9764
larly was the statement that the requirements were for a 30-inch main, but they built a 48-inch main.

The Master: Yes.

Mr. O'Brien: It would seem they had an understanding they were going to erect for them a 30-inch main, and for their own good reasons they made a 48-inch main.

The Master: That is the fact, however, and they have been charging them for the use of facilities on the basis of a 30-inch main. How about the 36-inch main?

Q. Will you describe the location of the 36-inch 9765
main?

Mr. O'Brien: As I understood it, the charge was a percentage of the cost of a 48-inch main.

A. The 36-inch distributing main leads from the Kingsbridge holder at Fordham Road and Harlem River into the Central & Northern Union Company districts.

Q. It runs in an easterly direction?

A. In an easterly direction, and these mains are

9766 being used entirely by the Central Union Gas Company.

Q. The 36-inch distributing main is not used by the Consolidated at all?

A. No, sir.

By the Master:

Q. Is the 48-inch main in Manhattan and the Bronx?

A. The 48-inch in Manhattan is being used jointly by several companies.

Q. And the so-called 30-inch main in Manhattan is being used how?

9767 A. The 30-inch main in Manhattan is being used by the Central. The 48-inch is used by the Central Union and the Consolidated Gas Company. The Central Union Gas Company is paying on a main 30 inches in diameter.

Q. But in fact it is forty-eight inches?

A. It is forty-eight inches.

Q. And that is used jointly with the Consolidated and the Central?

A. That is correct.

By Mr. Ransom:

Q. Have you any diagram or map which shows

9768 the location of these facilities?

A. I have.

Q. Will you produce any such diagram that the company may have?

(Witness produced diagram.)

The Master: May I ask you, Judge Ransom—on this schedule you have handed me I see an item, Central Union Gas Company, use of mains in the Bronx. Are those mains other than those specified?

Mr. Ransom: Those are the ones referred to

by Mr. Brundage, and there are also those con- 9769
cerning which I have interrogated Mr. Woods.

The Master: Where are these mains in the Bronx for which $4,489.44 have been charged?

Mr. Ransom: That was described by Mr. Brundage.

Mr. O'Brien: Judge, will you make it clear what mains the witness is talking about, and if they are referred to in the accountancy exhibit have it brought out?

The Master: When we adjourn this week, either to-morrow or Friday, I shall adjourn until Tuesday, September 30th, at 9:15 A. M. 9770
I am granting that adjournment whether I do or not go to Cuba, to afford the defendants opportunity of a week to examine the various schedules that have been furnished them, and also the schedule prepared by Mr. Teele, of which I think you have copies, to the end that, beginning the 30th of September we may go forward without further adjournment except as necessity may require.

I think that counsel for the complainant had better either apply to Judge Mayer for a modification of his order extending the time to make the report until the 2nd week of November, be- 9771
cause we cannot possibly finish it by the second week in October, or, get such an order on consent of all counsel.

Mr. Chambers: Or, just let it go.

The Master: I don't like to do that. Judge Mayer has made an order requiring me to report on the second Tuesday of October. I think he is away this week, or I would explain the situation to him. I think he knows it cannot be done, and I do not see the necessity for

9772 a formal application. I think the consent of all counsel ought to be presented extending the time of the Master a month within which to finish the case and report. If it is not finished by that time we will have to have another extension.

Mr. Ransom: Mr. O'Brien has just been asking with respect to Schedule 6. Mr. Brundage testified with respect to the rental charge the Astoria Light, Heat & Power Company for the land, bulkhead and conveying apparatus at the three stations.

9773 The Master: Yes, I remember that.

Mr. Ransom: And he testified to the charge of $4,489.44 to the Central Union Company for certain mains which he particularly described.

The Master: Now this witness is testifying to the other figures?

Mr. Ransom: As to the New Amsterdam, Standard and certain other mains.

By Mr. Ransom:

Q. This is a diagram which shows in a general way the location and identity of these mains (indicating)?

A. It is.

9774 The Master: Does it show the depth under ground?

Mr. Ransom: It shows the size and location.

The Witness: That is correct.

Mr. O'Brien: With respect to the sidewalk?

Mr. Ransom: No, with respect only to the streets under which it runs, or the territory through which it runs.

The Master: Can those plans not be amplified, to show their relative positions in the street with relation to sidewalks and curbs, and

the depth of them in the streets, so that if the 9775
counsel or the experts for the defendants want to make a test they can do it?

Mr. Ransom: That is shown on the large main maps in the office of which you saw a certain section.

Q. This was certainly prepared by you and under your direction and is known by you to be correct? A. It is.

Mr. Ransom: I offer it in evidence.

Mr. O'Brien: I am going to object to this, your Honor. I cannot see why the witness cannot describe this and why we have to have 9776
this picture. In other words, I say if you are going to give us a diagram, give us the complete story, the size of the mains, the topography of the territory through which it goes, its location with respect to the sidewalk, its depth in the ground, and everything else connected with it, because this reaches in several different directions. The main will be incorporated, I assume, in the property that they are going to claim a return on. Not only that, but the question of the adequacy of the rental is involved, and that brings in the cost, the original cost of putting the main in. So, why put this 9777
in with some little statement they may want to incorporate, instead of asking this witness these questions? He can give us this, either incorporate it in his oral testimony or give us a complete diagram with all the detail.

Mr. Ransom: This shows completely where these mains are and enables the further particulars to be obtained from the detail sectional main maps, which, of course, are drawn to a much larger scale.

9778 The Master: Have you stated your objection?

Mr. O'Brien: Well, not only that. As I go further I find it full of errors; at least of objectionable grounds. We have here this statement: "Kingsbridge holder station-holder capacity ten million cubic feet. Directly used by the Consolidated, Central and Northern Union Gas Companies—estimated use by Central and Northern Union Companies 5,000,000 cubic feet." That is a matter that has got to be yet proven. It is dangerous because it is not definite. The inference from that statement would
9779 be that nobody but those companies are using that holder. There is not any testimony, however, as to who does use the holder. When I was up there looking it over, I found the evidences that they pumped gas to Yonkers. That is not shown here on this statement.

Mr. Ransom: Like many other things Mr. O'Brien has found that are not true.

The Master: But there is force in Mr. O'Brien's objection that there is more on this paper than should be there. I do not like, for instance, the statement of estimated use by the
9780 other companies is five million cubic feet. If this simply showed what I expected it would show, where these figures were, generally speaking, I should receive it without hesitation. I hesitate to receive it with this added matter on it that is immaterial.

Mr. Ransom: I do not offer it as showing independently of other proof either the capacity or use of the Kingsbridge holder, or the

estimated use of that holder by those two Union 9781
companies.

Mr. Chambers: I object to the paper upon the ground that it has got a self-serving declaration down in the right hand corner.

The Master: It has several of them.

Mr. Chambers: "Diagram of general lay-out of certain properties of this Consolidated Gas Co. used jointly with other gas companies." It has got two more in the middle, where it says, "48-inch transfer main between Central Union Works and Kingsbridge holder used by Central and Northern Union Co. to the extent 9782
of a main 30 inches in diameter." Then another here: "Walnut avenue." Then there are three more on the top. They ought to be taken off or rubbed out.

The Master: Can I not do this—take this paper, with the exception of the matters of comment to which you refer?

Mr. Chambers: They ought to be crossed off.

Mr. O'Brien: Your Honor, why does not the witness' testimony already cover this? He says there is a 48-inch main, and he proceeds to describe it, beginning at the tunnel at 71st 9783
street, and then he gives its northern course, and he goes north to the river, and he speaks about the 134th street and 139th street sections of the same main; then its northerly course, and then it is finally being connected with the holder. There is not any frank disclosure about this paper.

Mr. Ransom: The paper is objected to on the ground, apparently, that it is too frank.

Mr. O'Brien: The inference that may be

9784 drawn is that they have not any other mains that are used by the Northern or Central Union. The inference might be that these mains are not connected with the 99th Street plant. There may be many other things. If he wants to describe that main he can give us it without this picture.

Mr. Ransom: It shows where the mains run.

The Master: You want a great deal more than is even here, apparently.

Mr. O'Brien: We will get what we want when we come to cross-examination.

9785 Mr. Ransom: Not unless you get it first on direct.

Mr. Chambers: The danger of having it in with those statements on it is that it will be forever misleading. It seems as though they ought to be compelled to give a clean one.

Mr. O'Brien: Here is one, Walnut Avenue, Central Union Works being used jointly.

The Master: This 48-inch main that runs along Morris Avenue is the main that you have said has been charged against the Central Union as a 30-inch main; is that right?

The Witness: That is so.

9786 By the Master:

Q. Where are the Central Union Works, at Walnut Avenue?

A. 138th Street and Walnut Avenue.

Q. Are you familiar with the use to which those works are put?

A. I am.

Q. By whom was it used?

A. The works?

Q. Yes.

A. By the Central and Northern Union Gas 9787
Companies.

Q. Any other companies?

A. That is all.

Q. So that this statement is correct on the paper Walnut Avenue. Central Union Works being used jointly by the Central and Northern Union Gas Cos"; is that so?

A. As far as the Central Union Works are concerned?

Q. Yes.

A. That is correct.

Q. That is a correct statement, is it? 9788

A. Yes, sir.

Q. Now this 48-inch main between the Central Union Works and the Kingsbridge holder, do you know the use to which that is put?

A. I do.

Q. Who uses it?

A. The Consolidated and Central Union and Northern Union gas companies.

Mr. O'Brien: Who else?

The Witness: Nobody else.

Q. And does that main that you say is used to the extent of a 30-inch main by the two companies—— 9789

A. 30-inch main.

Q. By the Central and Northern Union?

A. Yes, sir.

Q. It is not used by any other company?

A. It is not.

Q. Do you know that?

A. I do.

Q. So the statement here, "48-inch transfer main between Central Union Works and Kingsbridge holder used by the Central and Northern Union

9789 Co. to the extent of a main 30 inches in diameter", is correct?

A. It is correct.

Q. To your knowledge?

A. To my knowledge.

Q. There is a reference here to the holder at Kingsbridge. Do you know its capacity?

A. I do.

Q. What is it?

A. Ten million cubic feet.

Q. Who uses it?

A. The Consolidated, the Central and Northern Union.

9791 Q. Have you any knowledge as to the extent of the use to which it is put by the Central and Northern Union?

A. They are using it to the extent of a holder of five million cubic feet capacity.

Q. How do you know that?

A. Because I made estimates of their requirements.

Q. So your statement is as a matter of fact that they do use it to the extent of five million cubic feet?

A. I make the statement—I based my figure on

9792 the fact that if the Consolidated Gas Company did not have a holder at that point it would be necessary for the Central Union Gas Company to have a holder at or about that location of five million cubic feet capacity, in order to do the business for themselves, and the Northern Union Gas Company.

Q. And in your opinion you estimate the use of that holder at Kingsbridge to the extent of five million cubic feet, used by the Central and Northern Union?

Mr. O'Brien: On that basis?

A. On the basis of a five million cubic foot 9793
holder. Not on the cost of that holder, but what it would cost them to build a holder of that capacity.

Q. Based on their requirements you estimate they used this to the extent of five million cubic feet?

A. That they would use and require a holder of five million cubic feet capacity.

Q. Then is this statement correct: "Kingsbridge holder station-holder capacity ten million cubic feet"?

A. That is right.

9794

Q. And is this statement correct: "Jointly used by the Consolidated, Central Union and Northern Union Gas Cos."?

A. That is right.

Q. Is this statement correct, your statement "jointly used by the Consolidated, Central Union and Northern Union Gas Companies—estimated use by Central and Northern Union Cos. five lion cubic feet"?

A. They would require a holder of five million cubic feet capacity.

Q. Is it your testimony that you estimate the use of the Kingsbridge holder by the Central and 9795
Northern Union Gas Companies on the basis of five million cubic feet?

A. No, I have not estimated a use at all. I have estimated they would require a holder of five million cubic feet capacity to do their work.

Q. Then this statement on the paper, "Estimated use by Central and Northern Union Cos. five million cubic feet", is not correct?

A. The use of a holder would be based more or less on the different times of the year.

9796 Q. What I am trying to get at, Mr. Woods, and you have probably seen it by this time, is that if the statements made on this paper are made by you orally, so counsel may cross-examine you, and the statements made on this paper are simply reiterating what you orally testified to, I am going to let it in, but if I understand your testimony correctly, that you are not prepared to swear that the estimated use of the Kingsbridge holder for the Central and Northern Union Cos. is five million feet——

A. I will say they are using fifty per cent of the holder.

9797 Q. That would be five million cubic feet.

A. Yes, five million feet.

Q. So that statement would be correct?

Mr. Chambers: Do you mean per day or per year?

The Witness: The use of the holder per day or week, or whatever you want to use it for. It may be used more in winter than in summer.

Q. It is ten million cubic feet daily capacity, is it not; you can fill it up to that extent?

A. Yes, and you might fill it up two or three times.

9798 Q. It is what you call a ten million cubic foot holder?

A. A ten million cubic foot holder.

Q. And your estimate is the Central and Northern Union Companies use it to the extent of fifty per cent?

A. I estimate that the Central and Northern Union Companies would require a holder of that size and that capacity.

The Master: I want to know clearly and beyond any question.

Mr. O'Brien: Why not write these inscrip- 9799
tions right off and let them go in?

The Master: If I do not get a direct answer next time I will strike out this statement.

Q. As I understand it, Mr. Woods, this is a ten million cubic foot holder?

A. That is right.

Q. I understand that you estimate the use of that holder by the other companies?

A. I do.

Q. What I want to know is to what extent, based upon its being a ten million cubic foot holder—what percentage of that use do you ascribe or esti- 9800
mate ought to be ascribed to the Central and Northern Union Companies?

A. Fifty per cent.

Q. Then is this statement correct: "The estimated use of the Kingsbridge holder by the Central and Northern Union Companies is five million feet"?

A. That is right.

Q. I find another statement here: "36-inch distributor to Tremont and Southern Boulevard connects to 30-inch N. U. main. What does that N. U. stand for?

A. Northern Union. 9801

Q. This 36-inch distributing main—that is correct, is it?

A. It is used by them, yes.

Q. Are these mains used by the Centrall and Northern Union Gas Companies?

A. Yes, they are.

Q. By nobody else?

A. No, sir.

Q. They are used exclusively by them?

A. Yes. I will qualify that statement to this

9802 extent, your Honor, that the Northern Union Company may be distributing some gas into the Westchester district, but in so far as we are concerned it is being used by the Northern Union Gas Company.

Mr. O'Brien: You ship it to them and they may do anything they want with it?

The Witness: We are charging them for the main, for the use of that main. What they do with it is another thing.

Q. Are these mains, the 36-inch mains, distributing mains, used solely by the Central and Northern
9803 Union Gas Companies?

A. They are.

Q. What I have just said applies to the upper 36-inch distribution mains at Decatur Avenue and Fordham Road?

A. That is right.

Mr. Chambers: He said both ways, as to these statements.

The Witness: I qualified the statement to that extent, as to what the Northern Union did with the gas after they got it is another thing, but we are billing the Northern Union Gas Company for those mains.

9804 Q. None of these mains shown on this plan are used exclusively by the Consolidated Gas Company, is it?

A. Not any.

Q. Are they all used jointly by the Consolidated Gas Company with other companies?

A. Well, not the ones up there (indicating). They are used entirely by the Central and Northern Union Gas Companies.

Q. With that exception?

A. With that exception.

The Master: That statement at the bottom of the sheet is not altogether accurate, but I think I will take it in the light of this testimony. The paper will be received and exception allowed to the defendants. 9805

Mr. O'Brien: Will your Honor permit me to ask the witness a few questions before you receive it?

Mr. Chambers: Your Honor cross-examined there with a lot of leading statements.

The Master: I am going to take it; you can cross-examine him on it then. I do not think it will be tremendously important. 9806

Mr. O'Brien: Why can't the simple statement of the witness as to the street through which the main runs and its direction and all that be sufficient without bringing this in?

The Master: I think I would rather have it in. I will allow you an exception.

Mr. O'Brien: Will your Honor strike out from this the inscription as to everything else except the red main?

The Master: I am going to take the paper as prepared in connection with the witness' testimony.

Mr. O'Brien: Exception. 9807

Mr. Chambers: Exception.

Mr. Clark: Exception.

Marked Complainant's Exhibit No. 282.

Q. Now, Mr. Woods, with respect to the 48 inch connecting main in the Bronx, did you compute, and can you state the basis of the charge to the company or companies using the same jointly with the Consolidated Gas Company?

The Master: Is that the one on which the charge is based on its thirty inch main?

9808 A. 48 inch main running from the 71st street end of the tunnel on Manhattan to the Bronx end of the tunnel at 132nd street and East River; is that the one you refer to?

Q. Yes.

Mr. Chambers: I object to the question on the ground that that main ought to be excluded entirely and taken out of the case, and not lumber up the record with testimony about it.

The Master: Objection overruled.

By Mr. O'Brien:

9809 Q. Is that the Ravenswood tunnel, Mr. Woods?

A. That is the Ravenswood tunnel, yes. The southerly terminal is at the Manhattan end of the Ravenswood tunnel, and the northern terminal is at the Bronx end of what is known as the Astoria Tunnel.

Q. And the Ravenswood tunnel is the property of what company?

The Master: Objection sustained.

Mr. Ransom: I will ask afterwards.

The Master: This is not the time for cross-examination.

Mr. Ransom: I shall bring out these facts.

9810 Mr. O'Brien: It would save time as we go along.

The Master: I don't think so.

Mr. Chambers: In amplification of my objection, why should this not be thrown out of the case entirely? That main hasn't anything to do with the case. Why, if they are trying to save time and save words and save pages of record, why put it in and take t out? Why should not your Honor exclude it as immaterial?

The Master: On what grounds? 9811

Mr. Chambers: On the ground that it hasn't anything whatsoever to do with the question involved in the complaint and answer, the issues in this case.

The Master: Why not?

Mr. Chambers: Because it does not.

The Master: I don't get your point.

Mr. Chambers: It is not used by any of the Consolidated Company in any of its business.

Mr. Ransom: Of course it is.

Mr. Chambers: It is rented out.

The Master: No, that 48-inch main from 9812
Ravenswood from Fordham, I understand, is used in part by the Consolidated Company.

Mr. O'Brien: No, he said not, in answer to one of your Honor's questions.

The Master: I did not so understand it.

Mr. Chambers: On here it says by these two companies. The other witness testified that the rental was fixed, that the Consolidated did not use it, but it was rented to these other companies.

The Master: Let us get this right.

Mr. Ransom: I will bring out the facts if you will permit me. 9813

The Master: Here is a main which starts at East 71st street near the river, and I take it—yes, 71st street tunnel.

Mr. O'Brien: That is not the complainant's tunnel, your Honor.

The Master: I understand that.

Mr. Ransom: The complainant's main.

The Master: There is a main that runs up Avenue A and Pleasant Avenue, until it turns

9814 around in 134th street, until it comes to the 132nd street end of the Astoria tunnel.

The Witness: That is correct.

The Master: Does the Consolidated Gas Company use that at all?

The Witness: They do.

The Master: How can I strike it out?

Mr. Chambers: That is not the one I was talking about.

The Master: That is the one the question was about.

Mr. Ransom: I object to the interruption of counsel.

9815 Mr. O'Brien: Your Honor will throw that paper out when I get through with Mr. Woods, I am sure of that.

Mr. Chambers: There is a section right in there, the paper purports to show that it is owned exclusively by the Standard. That 48 inch main there ought to go out.

The Master: Why.

Mr. Chambers: It hasn't anything to do with this case.

The Master: It is used by the Consolidated.

Mr. Chambers: It is, in fact, owned by the

9816 Consolidated.

The Witness: The main under the Harlem River is the property of the Standard Gas Company.

Mr. Chambers: Entirely their property?

The Witness: Entirely their property.

Mr. O'Brien: The connection could not be made except with that?

The Witness: That is correct.

Mr. O'Brien: Isn't this main here——

Mr. Ransom: I object to the interruption at this time. 9817

Mr. O'Brien: Go ahead. You will waste about two hours in cross-examination.

Mr. Chambers: That ought to be cut out entirely.

Mr. Ransom: We haven't any return on that part of this line.

Mr. Chambers: Then take it out.

Mr. Ransom: We show what the connection is.

The Master: I don't think that ought to be in there.

Mr. Ransom: It is shown for the connection under the Harlem River. 9818

The Master: What part of this is Standard Gas Light property, Mr. Woods?

The Witness: Just the part under the Harlem river.

The Master: Between these two light dots that I see, is that correct? That part that I have drawn my ink pen through, eliminating the red is not Consolidated property at all?

Mr. Ransom: And the Consolidated makes no charge for it.

The Master: That is all right, but I want to get this diagram right. 9819

Mr. Chambers: Why shouldn't that be excluded from the case like any other amount?

The Master: That is excluded.

Mr. Ransom: It never was in the case.

The Master: I thought the diagram was inaccurate in having it in red, and I have changed it.

Mr. Chambers: Of course, there may be some other inaccuracies here.

9820 The Master: All right, then we will correct them as we go along.

Q. By what companies is this main used from 71st Street to Locust Avenue?

A. The Consolidated Gas Company, the New Amsterdam Gas Company, Standard Gas Company, and the Central and Northern Union Gas Companies.

Mr. Chambers: I fear that there is a mistake yet about that. Your Honor has not taken it all out. It runs away over there.

The Master: He said between those two dots.

9821 Mr. Chambers: Well, you see where these lines run down through?

The Master: Did you say those two dots that I have eliminated?

The Witness: Yes.

The Master: Is that the Standard property?

The Witness: That is the Standard property.

The Master: And that is the extent of it?

The Witness: That is the extent of it.

The Master: I correctly eliminated the property?

9822 The Witness: That is correct.

Q. This portion under the Harlem River, to which reference has been made, is property of the Standard and not of the Consolidated?

A. That is so.

Q. Will you describe just what use is made of those mains and tunnels?

The Master: I don't care about the tunnels.

Q. Well, the mains?

Mr. Chambers: Which?

The Master: From 71st Street.

Mr. Chambers: Let us take one at a time. 9823

The Master: That is the main now from 71st Street up Avenue A, the First Avenue, Pleasant Avenue, on 134th Street to the Locust Avenue holder, with the exception of that section under the tunnel, which is owned by the Standard Gas Light Company.

Mr. Ransom: Not to the Locust Avenue holder, but to Locust Avenue.

The Master: What do you call that holder then? Oh, that is the terminal of the Astoria Tunnel. I remember.

Q. What use is made of that of any of these 9824
companies, what is done with it?

A. It is used for transferring gases from the plants located upon Long Island, the manufacturing plants, namely, the Ravenswood plant of the New Amsterdam Gas Company and the Astoria plant of the Astoria Light, Heat & Power Company.

Q. And through this main gas is transferred and distributed to the Consolidated and these other companies?

A. Yes, sir.

Q. Now, on what basis is the cost of carrying 9825
this facility apportioned between the different companies?

A. It is based upon the ratio of demand of each company to the total demand on the plants located on Long Island, and to that extent the transmission facilities, this particular main in question, is apportioned with the same ratio as their demand upon those plants located on Long Island.

Q. And each of these companies makes certain demand on these manufacturing plants?

A. They do.

9826 Q. And you apportion the cost according to that relative demand?

A. The cost of transmission as applied to this main.

Q. How did you arrive at what you describe as the ratio of demand for the purpose of computing this rental charge?

A. By ascertaining first the requirement of each of these particular companies, their requirements as a whole, what they could produce themselves, and the requirements that they would need from other companies, namely, those companies located on
9827 Long Island.

Q. You ascertain their maximum daily requirements?

A. I obtain their maximum daily requirements, their plant capacity, and what was necessary for their daily requirements in excess of their plant capacity.

Q. By their maximum daily requirements, what do you mean?

A. The requirements—their maximum daily requirements, their maximum daily send-out to their customers.

Q. Their maximum daily sales?

9828 The Master: Was this problem before Mr. Masten in the eighty cent gas case at all?

Mr. Ransom: I don't think it could have been.

The Master: The Astoria plant, of course, was not built then. Was the Ravenswood plant built then?

Mr. Ransom: Yes.

Mr. Chambers: The Astoria plant was about completed, wasn't it?

Mr. Ransom: It was building at that time.

The Master: When was this 48 inch main laid? 9829

The Witness: Considerably since then.

The Master: Since 1905?

The Witness: Yes.

The Master: So that it did not have this main covered at all?

The Witness: No.

Mr. O'Brien: You have got before you now, your Honor, one of the most important and crucial matters in this case.

The Master: Yes, I appreciate that. When you get this uncovered, you have half of this case tried. 9830

Mr. Chambers: We will want plenty of cross-examination on this, your Honor.

The Master: Yes.

Q. From the figures of maximum requirements based on sales, and the plant capacity and send-outs, did you determine the demand of each company on the plants located on Long Island?

Mr. O'Brien: Your Honor, I object to the question because it assumes statements and language that is not in the witness' testimony. He is ringing in the sales and send-off.

Mr. Ransom: He said that? 9831

Mr. O'Brien: No, he did not say it.

Mr. Ransom: I appeal to the Master.

Mr. O'Brien: You may say what he says was synonymous with what you have in your question, but he has not said anything about sales, and he has not said anything about send-out.

The Master: But he will in a second.

Mr. Ransom: I think he did already refer to send-out.

9832 Mr. O'Brien: This is a matter we had up with Mr. Teele just before recess.

The Master: When you testified that the apportionment of the expense of maintaining this facility was made upon the demand of the various companies, did I understand you to mean by that the consuming demand of those companies?

The Witness: The consuming demand.

The Master: What they sold?

The Witness: What they sold, their requirements for their business.

The Master: The amount of gas they sold?

9833 The Witness: For their business, yes.

Q. Over and above what they made?

A. Over and above what they made.

Q. To what they send out?

A. Over and above their requirements for their consumers.

The Master: Well, I meant over and above what they made or what they sent out.

The Witness: This ratio is determined upon their requirements for their customers.

The Master: Yes, as to how much gas they sold?

9834 The Witness: Yes.

The Master: In other words, if the Standard sold a million dollars worth of gas, or a million cubic feet, and the New Amsterdam sold a million cubic feet, and the Consolidated sold a million cubic feet, the demands would be equal?

The Witness: Not necessarily. It would depend upon their plant capacity.

Q. It is over and above their plant capacity in reserve?

The Master: Assuming then that each one 9835
of them made half a million cubic feet of gas, then the demand would be equal on the Long Island Station, the half million each?

The Witness: No, it would not have any connection with it at the tunnel. Let me explain it this way. We will say that the demand of the Consolidated Gas Company for their consumers is 50,000,000 a day, or to be more specific, that their plant requirements—that they figure 15,000,000 feet a day, that their requirements for consumers were 50,000,000 a day; that their plant capacity, that they could 9836
make—the normal maximum working capacity was 40,000,000, they would require 10,000,000 additional cubic feet from some place with which to supply their consumers. In the case of the Consolidated Gas they would draw it from the Astoria Light, Heat & Power Company, and they in turn then would bear the burden of this joint facility to the extent that they take gas from the Astoria Light, Heat and Power Company. Now, the Astoria Light, Heat & Power Company and the New Amsterdam Gas Company at the present time have a 9837
combined capacity of 86,000,000 cubic feet, and I am referring now to 1919. The figures are somewhat different in 1918, these joint facilities, there are some modifications in the result of 1919 over the 1918 figures, because there have been readjustments according to the ratio of demand upon these plants. The Consolidated Gas Company takes practically all the gas of the Astoria Light, Heat & Power Company, which represents at the present time 50 86ths of these joint facilities; in other

9838 words, they are using something over 5/8ths of this joint facility for the distribution of this gas over into Manhattan, in the holders and distribution to the consumers. Now, the balance of that is apportioned between the New Amsterdam Gas Company for their requirements, getting gas from Long Island City, that they have got to use these joint facilities for getting it in, the Central Union Gas Company, they make a demand on the plants on Long Island; in the case of the Standard Gas Company in the year 1918, they made a demand.

9839 In the year 1919 they will have no demand on that property, but insofar as these figures are concerned, referring to 1918, the Standard had a small demand on the plants located on Long Island.

The whole thing is based on the fact that the gas company requires so much gas to be delivered to their consumer, and some particular companies haven't sufficient manufacturing capacity to deliver that gas to the consumer without drawing on some other company, and in the drawing of that company, they use these joint facilities, and these facilities are apportioned,

9840 based upon the ratio of their demand or the ratio of their use of that particular piece of main, and that is as accurate as I know how to make it, and I believe that it is absolutely accurate.

Mr. O'Brien: You mean the distribution of the cost of maintenance?

Mr. Ransom: I object to counsel interrupting at this time.

The Witness: This is not a maintenance

question at all, it is a question of the use of the 9841
property, an asset of some company.

The Master: One minute.

Mr. O'Brien: What is this split up?

Mr. Ransom: May I be permitted to continue my direct examination?

The Master: Yes, if you will give me a chance to call Mr. O'Brien to order, I will let you go ahead. Mr. O'Brien, you will reserve your questions for cross-examination.

Q In ascertaining and computing the ratio of payment, did you take into account the necessary reserve of each company as one of the factors? 9842

A I did.

The Master: Reserve of what, gas on hand?

The Witness: No, the reserve capacity required for each plant in excess of their actual requirements.

The Master: You see, you want to have in mind, Mr. Ransom, that a lot of these terms are Greek to me, I don't know what they mean, you have got to get it in pretty simple language.

Mr. O'Brien: Doesn't the fact that they have to call on another company, doesn't that mean they haven't got any reserve? 9843

The Master: I will let him question the witness, and you may cross-examine on all of these questions at the proper time.

Mr. O'Brien: There are a number of objections to be recorded. There hasn't been the basis laid for this testimony, there isn't any statement on the record as to what territory is covered by each company; there isn't any proof in this case, so far, that the Consolidated Gas Company has to engage in this extraneous business with other gas companies in order to carry on its business.

9844 The Master: I appreciate that there are a lot of questions that you gentlemen will raise with reference to it, but I am going to let this witness, as I did Mr. Brundage, testify that there are certain charges based in a certain way.

Mr. Chambers: There isn't any proof that there are any such other companies.

The Master: No. Go ahead.

Q. Mr. Woods, with respect to the 48 inch transfer or transit main in the Bronx, up to the Kingsbridge holder, by what companies is that used, and
9845 what is the nature of their use, and what is the basis of the charge?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, first upon the ground that there is no proof in this case that the Consolidated Gas Company uses the Kingsbridge Holder, that it was necessary for them to build it, that they needed it in conjunction with the other ways of producing gas in order to carry on its business, and that the record so far shows that it is being maintained practically exclusively for certain affiliated companies, as well as the main 48 inch main
9846 through the Bronx referred to.

The Master: There is a great deal of force in what you have said as bearing upon the ultimate fact to be found, but I shall take this testimony at this time and allow you an exception.

Mr. Chambers: I wanted to add to that that I object to this line of testimony and this question upon the ground that is not within the issues in the case, and is like an *ultra vires* undertaking by the company, like the restaurant and some other business, and not something that your Honor has to determine in order to

fix the rate base, or how much it costs them to 9847
make gas.

The Master: I think what you have said relates to the ultimate fact rather than to the proof being offered.

Mr. O'Brien: As I understand it, the term requirement is used here, and that is a variable factor, varying from day to day.

The Master: We will get at it before we leave it.

Mr. Ransom: You will get the full facts of it.

The Master: We will get their theory of what this proof is.

Mr. O'Brien: If we don't get it, we will for- 9848
get about it, I fear.

Q. What about this 48 inch transit or transfer main?

A. The 48 inch transit main running from the Bronx end of the Astoria tunnel in a westerly and northwesterly direction to the Kingsbridge holder is being used jointly by the Consolidated Gas Company and the Central and Northern Union Gas Company.

The Master: For what purpose?

The Witness: For the purpose of delivering gas into the Kingsbridge holder, where the 9849
gas is distributed into the Central and Northern Union districts, and also into the Consolidated district crossing the Harlem River, for the purpose of supplying the Washington Heights section.

The Master: So that the Kingsbridge holder is used by the Consolidated Company?

The Witness: Absolutely.

The Master: What was the basis of your charge? You really had three questions in one, there. I was going to sustain the objection on that, but I thought I would let it go in.

9850 Q. What portion of this main is charged to the Central Union and the Northern Union?

The Master: No, I would rather have the witness give the basis of the charge.

Q. What is the basis of the charge?

A. The basis of the charge is upon a main 30 inches in diameter, which I calculated and determined as being the capacity required for their use in transmitting gas into the Kingsbridge holder.

The Master: For whose use?

The Witness: The Central and Northern Union Gas Company.

9851 Q. That is, for so much of the gas as they used, a 30-inch main would be required?

A. That is correct.

The Master: Was it apportioned in the same manner that you apportioned the 71st street main, as I will call it?

The Witness: Yes, that apportionment was made but charged direct to the Central Union and Northern Union Gas companies for a main of 30 inches transit—30 inches in diameter.

Q. That is, they were charged just as though that was the only main there?

A. As though that was the only main, and as if
9852 it was 30 inches in diameter instead of 48.

Q. And used exclusively by those two companies?

A. Yes.

The Master: In other words, they are not charged for the use of facilities, but for the main itself?

The Witness: For the main itself.

The Master: And who maintains it?

The Witness: The 48-inch main is maintained by the Consolidated Gas Company.

The Master: And no further charge is made against the other companies?

The Witness: No further charge is made to 9853
them.

Q. Now, with respect to these 36 inch——

The Master: Let me interrupt you. I don't quite understand the theory upon which the Central Union and Northern Union are permitted to use mains that require more or less attention, I suppose, without paying for the maintenance charges

The Witness: They do pay for it.

The Master: How?

The Witness: On the charges made for the use of this property. 9854

The Master: Well, you charge them for the main?

The Witness: We charged them for the main, yes, and charge them a certain percentage which includes a return on the investment, plus maintenance, repairs, taxes and all.

Mr. Ransom: Here is the figures on these things, giving the itemization.

The Master: Let me get this clear in my own mind. Do I understand it is an annual charge?

The Witness: An annual charge.

Q. Which includes certain elements?

A. Which includes certain elements in connec- 9855
tion with the charge.

Q. In respect to these 36 inch distributing mains which are shown in the two broken lines, by what companies are they used?

A. By the Central and Northern Union Gas Companies.

Q. They are not used at all by the Consolidated?

A. No.

Q. Now, what was the basis of the charge——

The Master: Are they connected up with the Kingsbridge holder?

9856 The Witness: Yes.

Q. What is the basis of the charge to these two companies?

A. They are charged for the cost of that main.

Q. And on the same basis as this 30 inch main below?

A. That is correct.

Q. Now, with respect to the Kingsbridge holder, did you figure out the amount of the carrying charge?

Mr. O'Brien: I move that the last three questions and answers be stricken out, on the
9857 ground that it appears that the mains, so-called distributing mains, are not used at all by the Consolidated Gas Company, and that, therefore, there is no proof that they are necessary to their business.

The Master: Motion denied.

Mr. O'Brien: And being used exclusively by these companies.

The Master: Motion denied.

Mr. O'Brien: Exception.

Mr. Ransom: We, of course, take these out of our property account for the purposes of this case.

9858 Q. Did you figure out the amount of carrying charge to be apportioned among the companies using these various facilities?

A. I did.

Q. Will you state how you made the calculation in respect to the mains?

A. That is the ratio of charge.

Q. What was the basis of the charge?

A. Twelve per cent. on the value of the mains.

Q. That is the annual carrying charge on the value—you charged 12 per cent on the value of the main?

A. That is correct. 9859

Q. What about the holder; what was to be the basis of annual charge there?

A. Ten per cent.

Q. On the value of the holder, what cubic feet capacity?

A. Five million cubic feet capacity.

Q. With or without the necessary accessories?

A. With the necessary accessories.

Q. How about the land?

A. Eight per cent. on the land.

Q. As on the value of the land?

A. As on the value of the land. 9860

Mr. O'Brien: That is of the whole block?

The Witness: As much as would be occupied by a holder of this size.

Q. What portion, if you recall, of this holder site of the Kingsbridge holder, did you compute would be occupied by a holder of 5,000,000 feet, and its accessories?

A. About one-third.

Q. In the case of mains, what allowance did you make to cover taxes, maintenance, repairs and renewals, if any?

A. Taxes, maintenance, taxes, repairs and renewals? 9861

Q. Yes.

A. Six per cent.

Q. And in the case of land, as to taxes——

Mr. O'Brien: Is that a part of the ten?

The Witness: Yes, that is, in the case of mains, that is part of the twelve.

Q. And in the case of land, the remainder was allowed for taxes?

A. For taxes.

Q. Why is there a difference of two per cent. in

9862 the charges you figure for mains and the carrying charges for the holder?

A. In the case of the holder, the deduction——

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, your Honor. This whole thing is speculatory, and the basic objection of the defendants is that this whole property which is used to a large extent by the other companies is not shown to be necessary to the gas-making business of the defendants; there is no proof here that they ought to have gone to the expense of putting up a ten million

9863 cubic foot holder, requiring the large plot of ground they did, in order to help out these other companies, and the basis of the conclusions of the witness here are all speculatory, they are arbitrary, and under the guise of asking the witness this question, the defendants in effect are putting in evidence here on the value of these mains and evidence on the cost of maintaining mains, and cost of renewals, and so on, and it really brings in surreptitiously testimony that ought to come in in some other way.

The Master: If they think they are getting

9864 in any such proof they are mistaken.

Mr. Ransom: On the contrary, far from trying to add to our property account in this way, we are laying the basis for what deductions ought to be made.

Mr. O'Brien: The Greeks bearing gifts.

The Master: The motion is denied to strike out.

Mr. O'Brien: Exception.

Mr. Ransom: He is making an objection to a question that is not answered.

The Master: Well then, the objection is overruled and the question will be answered. 9865

Q. I asked why was there a difference between the two figures?

Mr. O'Brien: Even there, your Honor, that comparison does not get anywhere, it starts from speculation, and it leads to nothing valuable in this case.

The Master: In many things you say, Mr. O'Brien, I am inclined to agree with you, except that it is argument having reference to the record as it will stand when the case is finished, rather than objection to the question that is being asked. 9866 If the record rests where it is now, much that you have said will have great force, as to throwing off these items, but let us get the proof. Mr. Ransom may be able to go further and give additional proof.

Mr. O'Brien: Aside from my objection, it is the form that brought me to my feet particularly, it is the form.

The Master: Well, I will let him state.

Mr. O'Brien: He said he made calculations, and he figured it out a certain way.

The Master: I am going to let the witness say why he figured 12 per cent on mains, and ten per cent on holders. 9867

A. In the case of the holder, maintenance and repairs was included in the actual cost as applied each month to the maintenance of this particular property, and they were billed each month for the actual maintenance and repairs that took place.

Q. Over and above the ten per cent?

A. Over and above the ten per cent. This amount, the difference between ten and twelve per cent, was because the maintenance and repairs was not in-

9868 cluded in the annual charge, they paying their proportionate part monthly.

Q. In the case of the mains of the Consolidated maintenance and repairs and replacements were charged, but not separately billed?

A. That is correct.

The Master: To put it in another way, the Consolidated in the case of mains charges two per cent to cover maintenance and repairs?

The Witness: Yes, sir.

Mr. Ransom: In one case it is a separate charge over and above ten per cent.

The Master: I understand.

9869 By Mr. O'Brien:

Q. Does the two per cent on the holders cover maintenance and repairs, billed monthly?

The Master: No, that charge of ten per cent is for the use, and in addition to that a charge is made for maintenance and repairs, which may or may not be more than two per cent.

Mr. O'Brien: That is not actual but estimated?

The Witness: Yes, that would vary.

By Mr. Ransom:

Q. In the case of the mains you charge 12 per

9870 cent and do not bill separately for maintenance and repairs?

A. That is correct.

Q. How did you determine the values of the properties upon which these percentages were to be calculated in determining the amount of charge to these companies, first, as to the 48-inch and 36-inch mains?

Mr. O'Brien: I object to that on the ground that the witness is not qualified as an expert on values.

The Master: I am going to let him state the

basis on which he figured it. Let us first take 9871
the 48-inch main from 71st Street up to Locust Avenue.

Q. What value did you take for that?

A. Amount?

Q. No, how did you get at the value?

A. I calculated such matter as I could find in connection with this and made certain calculations in reference to the cost of such a main.

Q. No, I mean now the main up Avenue A?

A. That is the main I based upon certain records as to the cost of that, with computations based upon such data as I could find, and from that data and 9872
my experience of what I knew to be the cost of a main of that size, I established this value.

By the Master:

Q. Don't the company's record show how much it cost them to build that main?

A. Not entirely so, no.

Q. In what respect are the company's records deficient?

A. They are deficient to the extent that in this particular main for which you understand we had to make a charge to other people so that all the cost entering into this main should be included in it, there was no overhead included in the particular 9873
main in so far as the books of the company were concerned, and there was no interest on the money during the course of construction.

Q. In other words you took what the books showed to be the outlay and added to it certain amounts for overhead and interest on capital during construction?

A. Yes, sir.

By Mr. Ransom:

Q. You took the original book costs plus certain overhead?

9874 A. Ascertained what that book value included and made additions to cover what the mains cost.

By the Master:

Q. So that, taking 12 per cent on the actual cost of the mains according to the company's books, and eliminating the overhead that you added and the interest on capital during construction, the amount charged would be less than the amount you did make?

A. That is correct.

By Mr. Ransom:

Q. Would your answer be the same as to the 36-inch main, as to the basis?

9875 A. As to the basis, yes.

Q. As to the main up First Avenue, and so on, and as to the 36-inch distributing main, would the basis be as you have described?

A. The basis for my calculation was, as I have described. There was some little difference in the amounts.

Mr. O'Brien: I want the record to show my objection to all these questions.

The Master: Yes, your objection is recorded.

Mr. Ransom: If there is any question in the case to which his objection is not recorded I

9876 don't know about it.

Mr. O'Brien: And an exception to the Court's ruling in regard to each.

The Master: Yes, you have an exception.

Adjourned to Thursday, September 18, 1919, at 10 A. M.

Last Complainant's Exhibit 283.

Last Defendants' Exhibit W.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 9877

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 18, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.

MR. CHAMBERS, of Counsel for defendant Newton.

MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 9878

MR. O'BRIEN, of Counsel for defendant Swann.

MR. RANSOM: Before we start with the witness, your Honor, directed at the session at the Gas Company's office on Tuesday, that there be given a fuller itemization of the accounts of gas appliances rendered under public service commission uniform system of account 236, shown on page 150 of the schedule of property. I have that schedule all ready, and will give copies of it to the defendants now, and also hand a copy to your Honor. The others are being made up and may be ready today or tomorrow. 9879

ARTHUR W. TEELE, recalled:

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Teele, we were speaking yesterday about the item on page 18 of gas transferred. Did you have before you in making up this paper the total

9880 amount of send-out of each company? By that I mean the companies other than the Consolidated, and their memorandum or statement of the send-out?

A. I think perhaps I can make that situation clear if I recite what I did do with regard to this.

Q. You have recited what you did do. Can you answer whether you did that?

A. I have had the statements of all the companies before me; I have audited the accounts for 1918 of all the companies, so that I had before me the manufacturing reports both of the Mutual and the Standard and the New Amsterdam and the Astoria

9881 Companies, and I had them all in my hands.

Q. You did have them, the send-out from each of these companies?

A. I have had them, yes.

Q. No accountant could determine the correctness of this item of gas transferred unless he did have the send-out of all the companies?

A. I should say that it was necessary.

The Master: In other words, Mr. Teele, do I understand you to say that your tabulation ought not to be accepted until verified by proof of the send-out of other companies?

9882 Mr. Ransom: Mr. Teele is a witness in preparation for certain other cases, and in connection with the work of the cases he has, as brought out by the last answer, audited the accounts of the other companies.

The Master: I am asking him as an expert accountant whether the account ought to be accepted by a stranger without proof of the output of the other companies.

The Witness: I verified the items entering into the gas transferred on the Consolidated

books by verifying the facts as shown by the 9883
Consolidated Company from the accounts of the other companies. I had access to the other companies accounts.

Q. No. The Court asked you if you would not need proof of how much these other companies sent out?

The Master: I think he has answered it in a way. In other words, your testimony is that you satisfied yourself that the book entries were correct?

The Witness: Yes.

The Master: By extraneous evidence? 9884

Mr. Chambers: No. All he said is that he took the company's word for their send-out.

Mr. Ransom: He has not said that.

The Master: That is not so important. What I want to get clear in my mind is this. I think this is the most important feature of it, that in order to check up and certify the accuracy of certain entries in these record books, he had to go to the books of other companies.

Mr Ransom: He has not said that is why he went to the books of other companies. As a matter of fact, he went to the books of other companies, or happened to have gone to the 9885
books of other companies for other reasons.

Q. You would have to, in order to verify the entries in the Consolidated books, you would have to go to the books of these other companies, wouldn't you?

A. In order to verify the send-out of the other companies, and in order to verify sales of other companies, it would be necessary, of course, to go to the books of the other companies.

The Master: Well, in order to verify the charges made here and credits given, you would

9886 have to do that in order to be sure that they were correct, wouldn't you?

The Witness: In order to verify the quantities used, yes.

The Master: Next question.

Q. Just for the purpose of illustration, if I asked you to ascertain for me the transfer of gas here, and I deprived you of all knowledge or access to the records of other companies, you would not be able to tell me whether it was correct or not, would you, if you were deprived of that information?

A. Except based upon the reports of other com-
9887 panies made to the Consolidated Company.

The Master: And taking those away from you.

Q. Suppose I took away their reports?

Mr. Ransom: You mean destroy the Consolidated's own records? The Consolidated has its own records of gas which it received from other companies, just as it has records of coal that it received.

Mr. Chambers: Which are not in evidence, are they? These reports from other companies are not in evidence?

The Master: The witness need not answer
9888 that.

Mr. Chambers: No, of course not. The Court knows that.

Mr. Ransom: Our gas bills and our coal bills and our bills for all sorts of material and labor are in evidence.

The Master: I understand this to be the situation, Mr. Teele; see if I am right. The records of this company, either in their books of account or in supporting vouchers show statements made by other companies on the

amount transferred to the Consolidated Gas 9889
Company, is that correct?

The Witness: Yes, they do.

The Master: Does the Consolidated Company have in their records, reports of their own employees of gas received from other companies?

The Witness: Reports of their own employees of gas received from other companies?

The Master: Yes.

The Witness: Reports of their own employees? I am trying to understand exactly what the Master means by his question, so 9890
that I may answer.

The Master: This is what I mean, the books of the Consolidated Gas Company show transfers of gas from one company to another, don't they?

The Witness: They do.

The Master: Those entries are based on what?

The Witness: They are based upon the reports made.

The Master: By whom?

The Witness: Reports made to the Consoli- 9891
dated Gas Company by the other companies, and by the company's own manufacturing department.

The Master: That is what I want to get clear. Is there in the files of the Consolidated Gas Company reports of their own employees as to the amount of gas transferred to the Consolidated mains by other companies?

The Witness: Yes.

The Master: In what form are those records? Do you get my point?

9892 The Witness: Yes.

The Master: To illustrate what I have in mind and make it perfectly clear to you——

The Witness: I don't know whether they show the cubic feet of gas transferred or not.

The Master: To illustrate, we will assume Mr. Jones sells some coal to the Consolidated Gas Company, and you will find in the files of the company a voucher or bill of the coal man for the coal which he says he delivered, won't you?

The Witness: Yes.

9893 The Master: You will also find, as you have testified, a record by the employees of the gas company showing the amount of coal they received, won't you?

The Witness: Yes.

The Master: Have you in a similar way a record in the gas company of gas from which the other companies claim they sent in to the gas company and a record by employees of the gas company of gas they received from other companies?

The Witness: We have in the form of bills and vouchers.

9894 The Master: That is the same as the coal man's bill?

The Witness: Yes.

The Master: But I am talking now about the record similar to the record of the receipt of merchandise. Is there somebody who receives gas who certifies that they got it?

The Witness: I can't say, without referring to those vouchers, whether the vouchers for gas transferred are endorsed by an authorized official of the gas company, without referring to

the voucher itself. Practically all vouchers 9895
are, and I can't say without referring to the identical voucher, whether that voucher is so endorsed or not.

The Master: The next question, Mr. Chambers.

The Witness: I can tell by referring to it, of course.

Q. Not only do these other companies make a report of the amount of gas which they claim they send out, but also the same thing is true of the dollars, isn't it, in dollars. That is, the other companies not only make a report to the Consolidated 9896
of what they send out, which you examined, but also they fix the amount in dollars?

A. They render bills.

The Master: Mr. O'Brien, I must ask you to take your seat.

Mr. O'Brien: I was conferring with counsel.

The Witness: They render bills and issue vouchers. They render bills for gas delivered to and issue vouchers for gas received from. If I can make a statement in regard to this gas transfer, I perhaps can make it plain as to what is actually done. 9897

The Master: Wait until Mr. Chambers is through his conference.

Mr. Chambers: The witness wanted to make statement with reference to the record pertaining to the transfer of gas.

The Witness: Yes.

The Master: I will permit him to make it.

The Witness: This amount of gas transferred which appears in this schedule is the amount which appears upon the ledger folio operating

9898 ledger folio 701. In verification of this amount——

Mr. O'Brien: You mean the price, don't you? You don't mean the amount?

The Witness: I mean the amount that appears on folio 18 of this exhibit which appears upon ledger folio 701.

Q. May I just interrupt you. But it appears just as you set it up here, without showing which companies it came from, doesn't it?

A. If you will allow me to make the statement, and ask me the questions afterwards.

9899 Q. All right.

The Master: What page is that?

The Witness: Page 18.

Mr. Chambers: The last item.

The Witness: In verification of that amount so appearing in this schedule and as appearing upon the ledger, I analyzed the ledger account and found out what items entered into it, referring back from the ledger account to the original data, which is therein referred to. That is the bills and vouchers. And in substantiation of the quantities transferred, I found that it was made up by taking into account certain facts, that is the gas sold to consumers by the Consolidated Gas Company and the gas used by the company making a total amount of cubic feet, the verification of which I have heretofore testified to. The gas manufactured and sent out by the company, which is recorded by the manufacturing reports, the verification of which I have heretofore testified to——

9900

Mr. O'Brien: Just a minute. Your Honor,

I don't know that there is any testimony as to 9901
the verification of a manufacturing report?

The Master: No.

Mr. O'Brien: And I am going to object to the statement.

The Master: He said that he had referred to manufacturing reports to which he had already testified, not that he had verified the manufacturing reports.

Mr. O'Brien: Well, I am going to object to the testimony of the witness, and I move to have the answer stricken out first because it is a voluntary statement; secondly, because it 9902
has included in it conclusions of his own, he uses the words "in substantiation of", and I think that the examination should run along and he should answer the questions that I asked.

The Master: Motion denied. I have asked him to make the explanation.

Mr. O'Brien: Exception.

The Master: Go ahead.

The Witness: Third, the gas purchased from the Astoria Light, Heat & Power Company, which has been verified by me through an examination of the accounts of the Astoria Com- 9903
pany, and which is taken from the manufacturing reports showing the amount delivered to the Consolidated Gas Company and the amount of gas received from the other companies, less the amount which is transferred or delivered to the other companies, making a net amount of gas received from other companies by the Consolidated Gas Company. Now, this amount of gas received from the allied companies, together with what is purchased from

9904 the Astoria Company, makes a total amount in cubic feet of gas manufactured by the company.

Mr. Chambers: I object to that unless he is stating something here that is found in the books.

The Witness: These are found in the books, Mr. Chambers.

The Master: Let him finish his statement.

The Witness: It makes a total amount of cubic feet of gas manufactured.

Mr. O'Brien: Your Honor, I object to the statement for the reason that he is now basing
9905 a conclusion which is described by a mathematical process that has three or four factors that are estimates purely, and speculative, and other factors which are variable and other factors that are based upon reports and documents that are not in evidence.

The Master: And assuming that all you said to be correct, Mr. O'Brien, the more this witness proceeds in amplifying what he said, the stronger becomes your position in that regard. Go ahead, Mr. Teele.

Mr. O'Brien: Exception.

9906 Mr. Chambers: Wouldn't it be better, this is delaying my cross-examination, wouldn't it be better if I ask him the questions?

The Master: If you will let him alone he will be finished directly. Go on, Mr. Teele.

A. (Continued) The total amount of cubic feet which is ascertained as being manufactured by the company and as purchased from the Astoria Company, and received from the other companies, makes the total amount of cubic feet to meet the requirements of the company, as against the amount which

is sold to the consumers and is used by the com- 9907
pany, leaving an amount of gas unaccounted for, which the gas engineers ascribe to two causes, one being condensation—at least two causes, one being due to condensation, and the other to slow meters and leakage.

By Mr. O'Brien:

Q. Only two?

A. I said at least two.

The Master: Slow meters, leakage and condensation.

Q. Are you finished, Mr. Teele?

A. No. With regard to the quantities received 9908
from other companies, I have audited the accounts of the Astoria Company, of the New Amsterdam Company, of the New York Mutual Gas Light Company, of the Standard Gas Light Company. Having audited those accounts I have been able to verify the quantities which have been taken into the accounts of the Consolidated Gas Company as to quantities of gas received and delivered.

Mr. O'Brien: Your Honor, I am going to object again. The witness is indulging in a lot of conclusions, he is passing judgment upon the verity and reliability of his own system by stating, "I have been able to verify the ac- 9909
counts", and so on. I renew my objection that it further appears that he has gone into the records of companies that are not in evidence in this case in order to get up this schedule.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: Don't forget he is being cross-examined as to the method under which he prepared this tabulation. That is what we want to know, just what he did.

9910 By Mr. Chambers:

Q. Now, Mr. Teele, I turn to page 701 of Exhibit 190, which you refer to in your paper, and I find entries like this, which go apparently to make up the total that you have stated in your paper: "Sundry debtors", a little item of about $20,000. What reference has that to gas transferred? I say, "Sundry debtors", it is an entry of dollars $20,774.16. Now, that does not indicate that that is gas transferred, does it?

A. On its face, being in that account which is entitled "Gas transferred" I should say that it did in-

9911 dicate that it had something to do with gas transferred.

Q. What is it, did you find out?

A. I will tell you what it is if you will allow me to refer to the entries which explain the entry in the ledger.

Q. May I ask as we go along, where do you find the explanation of that?

A. By referring back to the entry to which the entry in the ledger refers.

Q. Let us follow that, because there are a lot more peculiar entries there.

A. New Amsterdam account—it refers to journal

9912 entry 73.

Q. Where will that be?

A. Operating journal entry 73.

Q. You are now referring to Exhibit 191.

(Witness examines book.)

Q. For that entry on page 701 to which I just called your attention you refer to——

A. I refer to journal entry 73, on folio 32 of the operating journal, which reads as follows:

"Sundries to sundry debtors, for credits as shown on January 1918 blotter, gas trans-

ferred, N. A., $20,774.16; undistributed adjust- 9913
ment, scrap, $10.87; repairs, gas appliances, repair shop, $5.00; repairs, mains, 111th Street street department, $21.62; interest upon Liberty Bonds account of employees, No. 1, three and a half per cent. $3.37."

This entry indicates accounts to be charged and accounts to be credited in the ledgers. The item to which you have referred is one item of the total entry amounting to $20,774.16, the details of which are shown in the January, 1918, blotter, and by referring to the January, 1918, blotter I will find out what makes up the 9914
item of $20,774.16. It is all in the regular course of the bookkeeping.

Q. Where is that blotter, is it in evidence here?

A. It is in evidence.

Q. Let us see that. This seems to be Exhibit 192, being the sundry debtors blotter No. 46 of the Consolidated Gas Company. Will you please state right on the record exactly the entry there. It is on page 574, isn't it?

A. Yes, sir. This is a copy of a credit bill, credit memorandum if you wish to call it that, it is the opposite of a debit bill.

By Mr. O'Brien: 9915

Q. Won't you say what it is?

A. I am reading it.

Q. Never mind any interpretations, just give us the excerpt.

A. January 31, 1918. New Amsterdam Gas Company, credit memorandum for material and labor employed by the New Amsterdam Gas Company in the manufacture of gas for our account during

9916 month of January, 1918, 51,445,500 cubic feet, at 836.71, $18,885.60.

Plus 10 per cent, 1,888.56; total $20,774.16.

The entire entry is in red ink.

To the left of the entry there is printed in red ink the words "Gas transferred" indicating the account to be debited.

By Mr. Chambers:

Q. Did you go any further back? Where did you proceed in the reverse order for information about that particular item, or did you stop there?

A. In making the analysis of this account I
9917 stopped at this point, because my verification of these items is made as a whole for the year, aggregating the amounts of debits and credits between the companies, not the individual items by themselves, but the verification of the total amount for the year.

Q. Instead of being for gas transferred that entry says it is for material and labor employed?

A. Yes.

Q. Did you ascertain if it was for gas transferred?

A. That isn't all that it says.

Q. For material and labor employed by the New
9918 Amsterdam Gas Company in the manufacture of gas for our account during the month of January, 1918. Now, it does not say one word there about any charge for gas, but rather it is for material and labor?

A. It does give a number of cubic feet, I think.

Q. 51,447,500 cubic feet at 36.71 a cubic foot?

The Master: That could not be $36.71 a cubic foot.

The Witness: If I read it $36.71 I was wrong.

Q. Well, what is it? 9919

A. 36.71 cents a cubic foot.

The Master: 36.71 plus 10 per cent.

Q. If you read it dollars you made a mistake?

A. If I read it dollars I made a mistake.

Q. Now, where is there anything there on that paper to show that any measurement was made as of gas transferred?

A. The entry does not purpose to be a measurement of gas transferred. The credit is a credit entry made by the Consolidated Company in favor of the New Amsterdam Gas Company for gas received during the month, the credit memorandum 9920 being made on the basis of the contract between the New Amsterdam Company and the Consolidated Gas Company.

Q. And instead of being in the manner which you have indicated, it is set forth here as based on material and labor employed?

A. You mean in the manner I have indicated?

Q. You have indicated that the gas transferred was found by taking all the gas of the New Amsterdam Company, all that the New Amsterdam Company made, and then some deductions and that the balance was the gas transferred?

A. That is the way it is found. 9921

The Master: Every month?

The Witness: Yes, every month.

Q. Why is reference made here to material and labor employed?

A. Because that reference is made under the terms of the contract. The quantity of gas transferred is determined in the way that I have described.

Q. Does that mean in short that the Consolidated

9922 Gas Company was getting its gas thrown into its pipes or mains for 36 cents, from this company?

The Master: Plus 10 per cent.

Mr. Ransom: I object to the question. He is not asking for the interpretation of figures. This is asking him for an interpretation of something far beyond figures.

The Master: No, I understand the question to mean, does this entry mean that the Consolidated Gas Company paid the New Amsterdam Company for the gas it got during that month, 36.71 cents, the cost of manufacture plus 10 per cent?

9923

The Witness: It means that that is the amount of the bill that was rendered at that rate, the amount of the credit memorandum issued at that rate.

Q. Did you find that they paid it at that rate?

Mr. Ransom: This is asking him to pass on the question whether this was all the consideration which was received, money or otherwise, from one company to another.

The Master: I think, Judge Ransom, that if this calculation is in evidence, that the examination with reference to matters of that character must necessarily be very exhaustive.

9924

Mr. Ransom: But it is not in evidence.

The Master: The only point in my mind is whether that question is a proper question at this particular time. I think Mr. Chambers has cross-examined to the point of indicating how this tabulation was made up.

Mr. Chambers: I will withdraw it.

The Master: I hesitated to limit the cross-examination, because I thought he had about

exhausted it, and would exhaust it without my limiting it. 9925

Mr. Chambers: I will withdraw that question for the present.

Q. You could not, Mr. Teele, check the accuracy of that bill submitted by the New Amsterdam Company to the Consolidated Company?

The Master: Call it a credit memorandum.

Q. Credit memorandum, unless you made an examination of the material that the New Amsterdam Gas Company used in making that many cubic feet of gas.

The Master: I will not allow that, Mr. Chambers, for this reason: It is quite clear to me that the Consolidated Gas Company had an arrangement with the New Amsterdam Gas Company pursuant to which the New Amsterdam Company was to charge the Consolidated Company for the cost of producing gas, plus 10 per cent. It is likewise perfectly apparent to me that this witness could not verify the amount said to have been furnished of 51,000,000 cubic feet, unless there were records of the Consolidated Gas Company showing the receipt of so much gas, or unless he went into the New Amsterdam Gas Company's records. 9926 9927 It is quite apparent to me that he verified the figure of 51,000,000 feet transferred that month as part of a total for the year, by auditing or analyzing the New Amsterdam figures. It is likewise apparent to me, without further cross-examination of the witness, that he, of course could not tell the amount that the New Amsterdam Company certified as having been actually expended for material and labor in making that gas, upon which the charge was based,

9928 without analyzing the books of the New Amsterdam Company. Why waste any more time?

Mr. Ransom: Will your Honor hear me briefly on that? Under the uniform system of accounts, when there is any arrangement between companies whereby one company gets gas from another, and any part of the consideration which passes from one company to another is in money, that shall be set up in this account.

The Master: What has that to do with this question?

9929 Mr. Ransom: Here is a situation where he has set up the part of the consideration which is money. That is not an arrangement based on cost of production as it is defined under the uniform system of accounts. The arrangement between the companies does not call for the payment by the Consolidated Gas Company to the New Amsterdam Company on a basis of what your Honor referred to as cost of production, if by that you mean to indicate something identical to cost of production as defined in the uniform system of accounts. The item which is taken into account in determining

9930 the cash part of the consideration which moved from one company to another under this reserve system, the items which enter into that, which one company pays to another, are not identical with cost of production, as that is defined in the uniform system of accounts, or as cost of production as set forth in this exhibit 205 for identification.

The Master: But here is a credit bill which based a charge for gas transferred from the New Amsterdam Company to the Consolidated

Company on the cost of material and labor plus 9931
10 per cent.

Mr. Ransom: On certain elements in the cost of production.

The Master: Whether it is certain elements or all of the elements, that charge was based on material and labor which went into the manufacture, plus 10 per cent.

Mr. Ransom: But it does not follow from that in any way, either by way of the definition contained in the uniform system of accounts or otherwise, that this reimbursement for certain elements of the cost of production covers 9932
all of the arrangement between the companies under which continuity of pressure and uniformity of supply is kept up in the various parts of the Borough of Manhattan.

The Master: I do not say that, but what I do say is this, that part of that charge is made up of material and labor. It is apparent from this book entry that that is the case, and in order to determine that that charge is correct, you would have to go to the books of the New Amsterdam Company to see how much they paid for labor and material.

Mr. Ransom: That is true of any one from 9933
whom we get anything.

The Master: Certainly, if it is an element to be considered. Here we have a situation which involves apparently a very important branch of this case.

Mr. O'Brien: The most important in the case, your Honor.

The Master: That is gas transferred. If as a matter of fact you can buy all the gas that you need for your service here at 36 cents,

9934 plus 10 per cent, or at 40 cents, plus 10 per cent, the contention of the defendant is that you ought not to be making gas that cost you 80 cents to make. That is one of their contentions. All I have indicated by my statement to Mr. Chambers, is that he ought not waste any more time when it is quite apparent from the entry itself, the minute it is based on labor and material which went into the amount of gas earnings, that in order to find that out, you will have to go to the books of the New Amsterdam Company.

9935 Mr. Ransom: But over and above labor and material there are other costs of production, and there is the cost for distribution.

The Master: Certainly. You need not be concerned when I say that is all it cost you, but I say that charge is based on items which do not appear in your books.

Mr. Ransom: And it is very fortunate that this witness, by reason of duties in other cases, has verified the accounts of these other companies, because under your Honor's ruling with respect to going back on engineering and superintendence items, he would have had to

9936 do that, I take it, with respect to gas transferred, just as with engineering and superintendence.

Mr. O'Brien: That does not appear in the record,——

The Master: Mr. O'Brien, I have not given you the floor.

Mr. O'Brien: I will note my objection to the statement of the witness.

The Master: I will not hear any objection at this time. Judge Ransom, is it your posi-

tion that I can take this witness' testimony as 9937
to the contents of the books and records of the New Amsterdam Gas Company without having them in court?

Mr. Ransom: We have presented our tabulations from our books. The witness has described at this stage of the proceeding two things——

The Master: Listen a minute. I know perfectly well what you have presented. I have asked you a very simple question. Let us assume for the purpose of this discussion that I take this as a tabulation from your books. 9938
Do you ask me to go further and assume that amounts paid by the Consolidated Gas Company to the New Amsterdam Gas Company are correct because this witness looked at the books of the New Amsterdam Company?

Mr. Ransom: I am personally inclined to believe that if bills are rendered, bills are paid in the regular course of business, that that is a basis on which your Honor might make a finding.

The Master: All I can say at this time is that I have very serious doubt about it.

Mr. Ransom: The fact that this witness has 9939
verified is, of course, very helpful.

Mr. O'Brien: We don't know that——

The Master: Mr. O'Brien, I will insist upon your not interrupting in that way.

Mr. Ransom: If it appear, for example, that the cost charged by the New Amsterdam Company for the elements included in its bills for the cash part of the consideration moving to it from the Consolidated Gas Company, if it should appear, for example, that as to the items

9940 which are covered by this 36.71 cents, that that was a disproportionate or excessive charge for those items, then I think your Honor would be bound to inquire into the circumstances; but if it appear that those same elements, for example, in the case of other companies, and in the case of the Consolidated, were usual, normal, fully justifiable charges on their face, then I say that your Honor might not feel that there was any pertinency in such an inquiry.

The Master: Suppose you prove by your witnesses and experts that it will ordinarily cost 36.71 cents for material and labor to make gas

9941 in New York. Suppose as a matter of fact the New Amsterdam Company, with its peculiar facilities and ability to turn out gas cheaper, could get it for 26.71, have I got to allow you to charge on your books 36.71 cents as payment to the New Amsterdam Company, upon the basis of your arrangement of actual cost of material and labor, when the fact may be that it only cost them 26.71?

Mr. Ransom: Well, if it appears——

The Master: On whom is the burden to make it appear one way or the other? Haven't you

9942 the burden to show that the amount that you paid to New Amsterdam under this arrangement, so far as the money end of it was concerned, was based upon an actual condition?

Mr. Ransom: I think we would have to produce some proof showing the reasonableness of the charges.

The Master: That is all I am trying to find out. I got the impression from what you said that I would have to take this entry in your books as being correct, just because this wit-

ness had looked at the New Amsterdam books. 9943
I do not believe I could do it.

Mr. Ransom: We do not offer this witness as a gas engineer or expert on the cost of production. He has made a tabulation from our books, and we are now having an inquiry as to two things: in the first place, whether the items he has set down in this tabulation come from our books, and were made up in a certain method, and in the second place what he did to verify it.

The Master: There is only one point at this time, and that is whether this tabulation is 9944
made from your books. The inquiry has led to a thought that I have been trying to clear up. Assume for the purposes of the discussion that I permit this document in evidence as a tabulation of your books, do you contend that because it is a tabulation from your books I am bound by these figures?

Mr. Ransom: I do not believe that you are bound by what this company pays for gas or coal or anything else. The question is, isn't it a reasonable expenditure? If it appears that this company paid $8 a ton for gas coal, where the evidence in the case indicated that gas coal 9945
could be procured for $5.85, your Honor, of course, would not be bound by the excessive price paid.

The Master: It is your contention, though, that you can rest your case upon the proposition that you already pay $8 for coal and put the burden on the defendant to show that you pay too much?

Mr. Ransom: We expect to justify the reasonableness of our items of expense, but not by

9946 an accountant, by a gas engineer who is familiar with operating costs.

The Master: Did you want to say anything, Mr. O'Brien? You do not have to say it just because I ask you, you know.

Mr. O'Brien: What I want to be able to say is this: I called your attention yesterday to the practice being indulged in by counsel, as soon as a crucial point is being reached in the testimony of a witness, to begin an argument in which he proceeds to outline a lot of leads. Now, he may not have that intention, I give
9947 him credit for a high motive in trying to explain an intricate matter to your Honor; but I am going as the trial proceeds to that being done, because whether that is his purpose or not, the effect is to give the witness the answers to the questions that are being asked.

I raise that point at this time because we are now at what I think is one of the most crucial points in this case. This case will stand or fall, may be won or lost, on this item.

The Master: On what they pay for other gas?

Mr. O'Brien: What they paid and how this transaction is really carried on.

9948 Mr. Chambers: Well, it is a peculiar transaction. We charge that.

The Master: That is why I made the inquiry I did as to how far Judge Ransom believed I was bound to accept book entries as evidence of fact.

Mr. O'Brien: What I wanted to object to was this: To the reading into the record by statements—not that I feel that your Honor is going to be moved by it, but I am thinking of the record all the time. I know how closely you

are following the case, and I know your ex- 9949
perience as a bright and experienced trial lawyer, but he is reading into this record now his statements, and is putting a complexion on the evidence going in.

The Master: You ought to have as much confidence in the reviewing judges as you have me. I do not think they can be fooled either.

Mr. O'Brien: Yes, but they do not see the *res gestæ;* that is the point. Your Honor, what I referred to particularly was the ingenious talk of counsel, where he proceeds now to try to indicate that there is another considera- 9950
tion, another consideration for the gas besides the money that is paid for it, and so on.

The Master: Do not let us discuss any more, because we may be cutting down the figure mentioned, or adding to it.

Mr. Chambers: I want to say at this time, that Judge Ransom has charged the defendants with being obstructionists,—of which I am one—and for ten minutes now he interrupted my cross-examination.

The Master: I asked him to.

Mr. Chambers: He interrupted it by a sum- 9951
ming up.

Mr. Hayward: But you asked him a question that could be answered by yes or no, and then he made one of his famous stump speeches. He could have said yes or no.

The Master: Let us go on.

Mr. Chambers: You see now I was on a certain line of thought, and he has interrupted. I do not know just exactly where I left off.

The Master: I will tell you where you left off. I interrupted you when you were trying

9952 to analyze or cross-examine the witness as to the charge of 36 cents plus ten, as to whether that was the price paid for gas.

Mr. Chambers: Now I recall what I wanted to say when your Honor said not to forget it—when I was interrupted by counsel.

The Master: Let us have it now.

Mr. Chambers: It is this: So far as I recall, there is and has been no proof in the case up to the present time of any arrangement between the Consolidated and these companies.

The Master: Very well, next question.

9953 Q. Did you examine the records of the New Amsterdam Company as to material and labor?

A. I examined all the records of the New Amsterdam Company for 1918.

Q. That included material and labor?

A. Yes.

Q. And that was for the purpose, was it, for preparing the lawsuit of the New Amsterdam Company, or was it for the purpose of checking up the items as to this?

Mr. Ransom: I object to the question as immaterial.

The Master: Sustained.

9954 Q. When did you make that examination of the records of the New Amsterdam Company?

Mr. Ransom: Is that material?

The Master: I think so.

Mr. Ransom: We do not want to try the New Amsterdam Company.

Mr. Chambers: If counsel will let me finish my question. He accuses us of being obstructionists. I do not mind being called an obstructionist, but I want to finish my question. Now I will finish it.

Q. Did you examine the records of the New 9955
Amsterdam Company simultaneously with your examination of the records of the Consolidated in regard to this entry?

Mr. Ransom: I object to the question as immaterial.

The Master: Overruled. With relation to your examination of the Consolidated books and this particular branch of them, what time was it that you looked at the New Amsterdam books?

The Witness: Since January 1st. I cannot tell you the exact days on which it was done. 9956

The Master: Then this work ran pretty much together, did it not?

The Witness: It ran together. The examination of all the companies was started at practically the same time.

Q. Did you make an examination yourself of the records of the New Amsterdam?

A. Individually?

Q. Yes.

A. With my assistants, yes.

Q. I mean you were there occasionally?

A. Yes.

Q. How much time, Mr. Teele, have you 9957
devoted——

The Master: I will sustain the objection to that.

Mr. Ransom: I think that is immaterial.

Q. Now I find another entry here on page 701, to which you refer, "Sundry Debtors' N. A. Account." Would that be the same as the other I have just asked you about?

9958 The Master: What does that mean, New Amsterdam?

The Witness: New Amsterdam Company.

Mr. Chambers: It says "Sundry Debtors' N. A. Account". That would be for February. It shows it under February.

The Witness: That is for February. It would be in the Sundry Debtors' blotter for February.

Q. I find in January, 1918, an entry, "Astoria Light, Heat & Power Company, a debit of $584,000 for that month—$584,400.91". Did you trace that

9959 entry back?

A. Yes.

Q. Back of this entry here where did you go?

A. First to the operating journal, the entry number of which is shown in the operating ledger. I will help you find it (examining books). That is the January blotter. The reference in the operating ledger is to voucher No. 1411 for the month of January, found on approved Invoice Record, folio 61.

Q. Has that been offered in evidence?

A. Yes.

Q. Are you sure?

9960 The Master: Yes, I remember that.

A. It is Complainant's Exhibit No. 198.

Q. That is the entry back of this?

A. That is the next entry to the one in the ledger, and refers to the voucher No. 1141, dated January 31st, in favor of the Astoria Light, Heat & Power Company, the account charged being gas transferred, and the total amount of the invoice which the voucher is passed to settle is $584,400.91. The

folio in the operating ledger indicated on this book 9961
is 701, to which the item is posted.

The Master: How many cubic feet of gas does it say there?

Mr. Chambers: And the dollars?

A. It does not say. It gives the name, the amount to be charged, the ledger folio and the dollars. For further information it is necessary to refer to the voucher itself.

Q. Did you get the voucher; did you refer to the voucher?

A. I did.

Q. And what did the voucher show? I would 9962
like that voucher right now, one of them. Have you got it?

A. We have no vouchers in Court.

Q. Well examine that voucher. Did it have labor and material?

Mr. O'Brien: Your Honor, at this stage of the game I want to call your attention to this as illustrative of the position you took, on the face of these books, that standing alone here this item is not in there; it is not the book of original entry.

The Master: That is why I am giving you a 9963
week or more in which to have your experts get information on which you can cross-examine Mr. Teele.

Mr. O'Brien: In other words, here we jump, there isn't an intermediate book, apparently, but you get direct reference to a voucher that is not in evidence, and they have got to have those vouchers in evidence in order to make these admissible.

The Master: Your statement is noted, Mr. O'Brien.

9964 Mr. Chambers: I ask the Master that they produce, so that we may have it at the afternoon session, if there is one, or to-morrow morning, that voucher.

The Master: I think that is reasonable. Mr. Brundage, will you see that that voucher comes here to-morrow morning, the one for January, for Astoria?

Mr. Brundage: Yes, sir.

Mr. Chambers: Perhaps I better not ask him anything further about that voucher until I get it.

9965 The Master: My impression is, Mr. Chambers, that you have gone far enough to indicate how much reliance may be placed upon this tabulation. My notion is to receive the tabulation for what it is worth, without indicating how much I think it is worth, except as I have already indicated. Now then, my mind runs in this direction, that with reference to all of the matters and things that are based upon company records as such, I am going to take the books as proof of the fact, namely, that they paid out a certain amount for pay rolls and a certain amount for merchandise

9966 and matters of that kind, that they furnished a certain amount of gas to customers, that they collected a certain amount of money from customers; in fact, every item that is traceable to original records in their books, I am inclined to accept the books as I have, and the tabulation of them as proof of the fact, instead of calling individual witnesses to prove individual facts. Now, when you get beyond that, and you get into the realm of the amount paid

to other companies, based upon their operating 9967
costs, or the amount they spent for material or labor or distribution payments, based upon the amount of service which the mains get, I am inclined to receive the tabulation merely as a tabulation of the books, and not as proof of those facts. Now, have I made myself clear?

Mr. Chambers: Yes.

The Master: Now, having received the documents in evidence, I shall afford counsel for defendants the fullest measure and scope of cross-examination to attack all of the items in 9968
the schedule, and for that purpose I adjourn the case for a week to have you gentlemen prepare your cross-examination of Mr. Teele. Now, that is the way my mind has been operating.

Mr. O'Brien: May I interject a word here? As this examination runs along, we find repeatedly that the witness' tabulation has been based upon papers not in evidence.

Mr. Chambers: That is what I was going to say.

Mr. O'Brien: And not underlying data leading up to the books that are in evidence, and 9969
entirely extraneous evidence.

The Master: I thought I made myself clear. This witness' testimony showed, with the exception, I think, of one or two items, his tabulations are based upon these books, and that is all it is. It is a summary of these books, and his tabulation is no more forceful as evidence of the facts than the books themselves. Now, what I am trying to find out is that the tabulation as such had better be received and that

9970 you gentlemen then postpone cross-examination upon the merits of the tabulation and the right to charge certain items and show the weakness of the tabulations as bearing upon the weight to be given to them.

Mr. O'Brien: But the error we fall into, your Honor, is that we have got something in evidence which we believe ought not to be received for the reason that the papers, the extraneous papers, records and documents, on which, in part, it is based, are not in evidence, and we have the right to either go into them
9971 and examine them, or the right to cross-examine him on them, because we haven't got the papers here.

The Master: But listen to me a minute, will you? There are two classes here. We have certain entries in these books that are supported back to the original vouchers, of merchandise sold and delivered to and received by the company, of items for money which is paid out for material, labor and supplies, and the rest of it. Now, those underlying data are in the files of the Gas Company, and I have ruled that I will not require those to be produced,
9972 and that I will take the books, verified and checked against that original data as evidence of facts, and items therein contained. Now, we have another and entirely different classification: namely, items appearing in the books and not based upon underlying data and vouchers in the company's files, but based upon underlying data and vouchers of some other company, and as to that I do not think I can take the entries in the books as evidence.

Mr. Ransom: Do you mean as evidence or 9973
as conclusive?

The Master: I think as evidence. I do not think I should take the entries in your books of gas received from other companies as evidence of the fact that you got so much gas, without some underlying data in your files, and I am quite clear that I ought not to take entries in your books of charges made by other companies based upon the amount they paid for material and labor for which there are no underlying data in your files, naturally, as evidence of those facts. I do not think I can. Now I think 9974
Mr. O'Brien is correct when he states that this case will probably turn upon the amount that this company pays to other companies for the gas it receives.

Mr. Ransom: I should be very much surprised if it did.

The Master: It would not surprise me, because as I understand it a very substantial percentage of the gas you furnish to the people in New York is bought from other companies. Isn't that so?

Mr. Ransom: Yes, but there isn't any of these companies who can make gas on the 80 cent 9975
basis.

The Master: That is entirely a different question, but if those companies can make gas and you can buy it at a price that will leave you a profit and a return on your investment at 80 cents, sold to the public, you are not injured any.

Mr. Ransom: But unfortunately, there isn't any such situation.

Mr. Chambers: Oh, now, Mr. Ransom——

9976 The Master: I didn't say whether there was or not. I say that on Mr. O'Brien's theory, this case may turn, and it may become exceedingly important as to just what it costs the New Amsterdam to make the gas they furnish you, as to how much material goes into it, and how much labor. I assume of course from your angle, that you expect to demonstrate the proposition that you have gotten from the New Amsterdam the lowest possible price that they could manufacture and deliver it to you. But suppose you are wrong about that, suppose the
9977 defendants show you overpaid them 10 or 12 cents a thousand cubic feet, wouldn't this case turn on that?

Mr. Chambers: They are carrying, as to the Astoria Company, they are paying them a return on the capital invested.

The Master: On the capital invested, I think, yes.

Mr. Chambers: A million and some odd thousand dollars on the capital invested over there, on top of the price of the gas.

Mr. O'Brien: That million has got to come out of this case, your Honor.

9978 The Master: Don't let us say what has got to come out or go into this case. We are trying to get the record in the case first. What I am trying to point out to Mr. Ransom and Mr. O'Brien at the same time, if I can make myself clear, is that there are really two branches to this tabulation. I have been talking now about receiving the tabulation, and I am trying to indicate to counsel that I think the cross-examination preliminary to my either receiving or ruling out this tabulation, has gone far enough,

because I understand the point made by the 9979
defendants, that there are items in this tabulation which do not appear in underlying data of this company.

Mr. Chambers: And also that the tabulation is not based upon a tabulation from the books, but from other documents.

The Master: Exclusively?

Mr. Chambers: Exclusively.

The Master: Now, the answer to that is, if Judge Ransom will permit me to answer it, that so far as this witness is concerned, he has prepared a tabulation exclusively from these 9980
books.

Mr. Chambers: He said once he used their returns.

The Master: No. His tabulation is made from entries in these books; his verification, in certain instances, has to do with matters outside of the books. Now, what I am inclined to do is this, and I am inclined to think that it will be the most expeditious way of handling the situation, is to receive the paper and the tabulation of this witness from what he conceives to be entries in these books. Now, your engineers and accountants will have from now 9981
until the 30th of September to closely analyze it and then set out in nice fashion, an intelligent fashion on the record, the various schedules and the items which cannot in the nature of things come from those books, so that the Master can have before him when he comes to a conclusion, in proper sequence, the items which are under discussion. For instance, the tax question, apportionment of expense of various kinds, the amount of gas transferred,

9982 Now, if you take my suggestion, protecting yourself, of course, by proper objection to my receipt of this tabulation in evidence, and you turn these over to your accountants and between now and the 30th of the month they give you a report calling attention to the various items which are not in underlying in the company's books, and I permit you, as I will, to bring out from this witness the fact that there are these items 1, 2, 3 and 4, which depend upon explicit evidence outside of the books, then I will have before me squarely the items which you want me to disregard as not being properly
9983 proven.

Mr. Chambers: Well, page 31, he swore positively, as I remember it, that he did not procure that information at all from the books.

Mr. Ransom: Every item there appears on the books.

The Master: Do not let us get into a discussion.

Mr. Chambers: I understand the rule to be that where books are put in evidence, that a tabulation may be made from them for the convenience of the Court.

9984 The Master: Yes.

Mr. Chambers: To relieve the Court from wading through a number of voluminous volumes.

The Master: Yes. Now, let me interrupt and carry your thought. If I don't take the tabulation, it means this, that I have got to take these books and I have got to study them and I have got to tabulate figures, and you must point out to me in the books themselves,

the items that you say are not supported by 9985
underlying data.

Mr. Chambers: Not at all. What I want you to direct the witness to do is to make a new tabulation from the books and cut out these. In the "net loss from gas business" on page 34 —this is full of conclusions, this man's judgment and discretion as to certain matters, how he will divide them and how he will make divisions as to that part which is applicable to the gas business and not applicable. Why can't we have, if your Honor is going to take in evidence a tabulation, a clean, straight forward 9986
tabulation from the books? That is the trouble.

The Master: Let us get our record right.

Mr. O'Brien: Will your Honor hear me?

The Master: No, I will not. I want to hear Colonel Hayward. He has not said a word today.

Mr. Hayward: I want to say just a word. I want to put myself on record at this time, as perhaps I don't exactly agree with Mr. Chambers and Mr. O'Brien on this subject, but I want the Master to know what my objection is to this procedure. I think we are all missing 9987
the point entirely. The thing lies deeper and is more important and more basic than anything the Master has brought out, or Mr. Chambers has, and that is, briefly this. These books themselves are not good for anything at all.

The Master: They have made that point.

Mr. Hayward: They are not good for anything on that theory of evidence, therefore, how can a tabulation in which this witness shaves the entries in the books to satisfy his interests or the company's interests, how can they be

9988 any better evidence than the sources from which they come?

The Master: They can't.

Mr. Hayward: They can't. Now, the only case that we have had that Judge Ransom relied on, which was supposed to extend the rule, and which I conceded frankly did extend the rule, the Northern Pacific case, was it the Jacobs case?

Mr. Ransom: The Keyes case.

Mr. Hayward: Well, the Keyes case. If the Master will recall, in that case the procedure
9989 was there were a lot of bills of lading and a lot of underlying data?

Mr. Ransom: Yes.

Mr. Hayward: The heads of departments, with ten assistants or fifty assistants, or however many assistants were necessary, went to those original sheets, those bills of lading, the underlying data, and made tabulations from them. Now, if the Master will recall, they did not take the first half of the month of February or the second half of the month of July to see if the things were accurate at all. It was a mechanical and a complete tabulation
9990 of the underlying data.

Mr. Ransom: Yes.

Mr. Hayward: They went clear through the whole thing.

The Master: What you are discussing is a matter that we discussed at length before, Colonel. I may be in error in my ruling, but I will not change it.

Mr. Hayward: Now, in order to make that case on which Judge Ransom relied analagous to this, would be just the same as to have told

those men in that case, the defendants in that 9991
case, or the opposing counsel, that if you don't like this tabulation, you can go and look through all these way bills and so forth, and see if they are right or not. But they did not do that. Why should we go up to the Gas Company and put in hours and hours of toil, when the plain rule of law requires these people to do that; requires these people to make a mechanical and an accurate and a complete tabulation of the underlying data for their own convenience, in order to prevent us requiring that these things be brought into Court? But 9992
you can't say if you don't like this, go and prove it is wrong. It is not our business to do that. Mr. Teele has got to go with his assistants to original sources of this information, whether it is the New Amsterdam Company or the Consolidated Company, it has got to have a beginning, and at least have a semblance of respectability and admissibility under rules of evidence, and it is not fair and it is not legal to require us to take this tabulation, which I say is not worth the paper it is written on, because it is not founded on anything, it cannot be any better than its sources, and the sources 9993
are no good, and I want to make my objection at this time on that basis, that the whole thing is predicated on a wrong beginning, and we can show by cross-examination, we can take these items up one by one in this schedule that he has here, if the Master pleases, it will be a long job, but it would be clearly our right, and say, "Did you go back to these original sources?" "Well", he will say, "I did not. I might have in one certain month, or something." Well, as

9994 soon as he says, "No, I did not", our motion to strike it out would surely lie.

The Master: Colonel Hayward, I am going to do this——

Mr. O'Brien: Will your Honor hear me before you make your decision?

The Master: No. I am going to suspend the further cross-examination of this witness until we reconvene on the 30th of September. At that time I shall expect counsel for defendants to point out from schedule to schedule by this witness' testimony, those schedules or items in

9995 them not based upon underlying data in the possession of this Company, and then I will make up my mind whether I am going to take up the paper, limiting and excluding those items under consideration, or whether I will take the paper and say that I shall refuse to consider those items in it; in other words, whether I will require a new tabulation excluding those items, or I will take the tabulation and announce that I will not be bound by certain items in it.

Mr. Hayward: And I would like to say here and now what I will say to the Master on that

9996 day. The thing that makes this tabulation non-admissible is before the Master at this time, in the witness' statement and his admission, if you want to call it that, that he did not go to the original sources.

The Master: I understand the witness' testimony thoroughly. Here is the situation, Colonel. When I permitted these books of account in evidence, I did so upon the theory and after full discussion, that they were evi-

dence of the facts in so far as they were sup- 9997
ported by underlying data, data in the office of the gas company, that I would not require the production of witnesses to prove the underlying data, that I would not require this witness and his assistants to check up to a point where he would testify as he has, that in his opinion these books are properly kept as to all the matters which are supported by underlying data. Now, I am going to adhere to that ruling, because I think I am right about it in spite of the fact that all counsel for the defendants think I am in error. Now, I am 9998
going to stand by that, and the minute I stand by that, then it follows that I disagree with you as to the bases for a tabulation, because I have ruled that there is a proper basis for a tabulation, logically. Any tabulation upon entries in these books, supported by underlying data following my theory of the rule of evidence, is evidence of the contents of these books tabulated in accessible and easy form for the Master. The place where I begin to agree——

Mr. Hayward: I follow you, if I may interject, if the tabulator went to the orginal 9999
sources.

The Master: Well, he testifies that under my instructions he did go back to the original sources.

Mr. Hayward: To some place.

The Master: Yes. That to me is sufficient. Now, where I begin to agree with counsel for the defendant is that wherever this witness has made a tabulation of figures based upon his estimate of things, or other people's estimate of things, or records in the possession of other

10000 companies, I do not think that there is a tabulation from these books.

Mr. Ransom: There is no such instance.

The Master: I am not going to spend any more time on it to-day. I think it is going to save time if we suspend the further cross-examination until the 30th of September.

Mr. Ransom: May I say a word on that?

The Master: Yes.

Mr. Hayward: It seems to me that that is a view on the part of your Honor which is bound to operate very disasterously and disadvantageously to the complainant. I should say that it 10001 was of the utmost importance to the expeditious going forward of this trial, that before adjournment is taken to-day or to-morrow, we know whether these tabulations are to be received in evidence. Now, there is no item of expenditure and no item of revenue shown in these schedules which is not from books that are in evidence. Counsel for the defendant has failed to differentiate between what was examined to verify and check and substantiate, and what was examined in making up the tabulations. The tabulations are from the books. If 10002 the witness had said here "I tabulated the books, and I did not examine anything to verify" the tabulation would be correct and complete, but because the witness examined various documents to verify and to confirm his accounting judgment that the book entries which he found and which he tabulated, were correct, they create an impression that this is a tabulation from something not in the books.

The Master: Don't let us have any further discussion about it. Let me ask, under what

circumstance and in what way, a suspension of this cross-examination is going to injure you? 10003

Mr. Ransom: Well, because, for example, if by any peradventure these tabulations were not to be received, that is in effect a complete—it would amount to a complete reversal of the ruling both as to the admission of the books and what has so far taken place with respect to the tabulations. We will be forced to resort to the most protracted method of proof possible, which has been the objective of the defendants throughout this case.

The Master: Are you getting back to the point that I have got to take from these books a statement that it costs the Amsterdam Gas Company X cents? 10004

Mr. Ransom: No, but as a tabulation, there are two questions which you always have to keep in mind, as I have said several times. One is the question whether the company lays out money, and the second one is, and without which our case on contested items is not complete, is whether that expenditure, that charge against our operating expenses, is reasonable. We maintain that these books do prove outlay. We do not contend that upon some of these contested items to which attention has been directed our case would be complete and would carry to your Honor's mind the conviction which we hope to place there, unless they substantiate the fact of the outlay, the fact of the charge, with proof of the reasonableness of the charge. 10005

Between now and the time when the hearing resumes, on the first of October or the 30th of September, we want to be in a position to go

10606 ahead and offer our proof in substantiation of the reasonableness of these charges and these outlays. If we are to be forced back to some wholesale production of vouchers, if tabulations made up from the books are not admissible as the first step in the proof which we offer here, then we ought to know it to-day or to-morrow, so that meanwhile we could go back and prepare for the weary months that would be ahead on such a method of proof.

The Master: I cannot quite follow you. Assume now that I say I am going to take this tabulation in evidence, but I will not take 10607 either the books or the tabulation as evidence of the fact that it cost the New Amsterdam Company 36.71 for material and labor in making gas. Don't you have to be prepared to get that proof?

Mr. Ransom: The matter of our proof of the reasonableness of the money charge made by the New Amsterdam to the Consolidated is, of course, a matter on which we shall be prepared to offer proof.

The Master: How does this change the situation any, whether I take in a tabulation of all 10608 the items, or not?

Mr. Ransom: With the idea that these tabulations should not be received until after full examination had taken place upon the schedules, and that the question of our mode of proof should be held in abeyance for weeks, would have the most serious consequences to our preparation for the concluding phases of this trial.

The Master: I do not understand that.

Mr. Ransom: Suppose that your Honor

ruled to-day you would not receive these tabu- 10009
lations.

The Master: Yes, what would you have to do?

Mr. Ransom: We would have to resort, as I see it, to the most rigorous common law concepts that ever were applied in the trial of a——

The Master: Do not let us characterize things. What would you have to do; what witnesses would you have to call, what fact would you have to prove?

Mr. Ransom: We would have to bring into 10010
this Court every voucher——

The Master: Every voucher of what?

Mr. Ransom: Of every coal company, every gas company.

The Master: Not at all. I have said over and over again that as to all of these items, coal, oil and other material purchased by the Gas Company, which its records show it received and paid for, I will take the books as evidence of the fact that you have got so much coal, oil or other material, and pay for it. In so far as these books show that you employed a lot of men to do a lot of work on mains, and 10011
that you paid according to the pay roll, I am taking the books as evidence of that fact. You would not have to prove those things, would you?

Mr. Ransom: No.

The Master: Then what would you have to prove?

Mr. Ransom: Supposing that our records show that similarly by the certificates of the

10012 responsible executives this company received so much gas and paid so much for it, why are not the books and the records similarly proof of that?

The Master: It might be, but you have no such record here, as I understand it.

Mr. Ransom: We have.

The Master: Showing the amount of gas received from the other companies?

Mr. Ransom: We have.

The Master: You have?

Mr. Ransom: The thing which we have not,—let us say we have not as to coal the

10013 proof as to how much it may have cost the Berwind-White Company, for the coal which it delivered to us; we have not, let us say, within our own files, the complete proof as to how much material and how much coal and how much oil went into the gas for which the New Amsterdam billed us so much money as a part of the moving consideration. But if the books are admissible to show that we got so much coal and got so much for it, subject to proof that we did not pay an unreasonable price, I can see no way in which the books are not ad-

10014 missible, with the underlying certificates of the payments and the receipt—why they are not admissible to prove that we got so much gas and that the money or, as the uniform system of accounts calls it, the cash part of the purchase price was so much, which we paid.

The Master: I am going to suspend this cross-examination until to-morrow morning. I am going to give you an opportunity then to show me how your records show how much gas was received.

Mr. Hayward: And I want to finish. It 10015
will just take me about thirty seconds, if the Judge is through.

Mr. O'Brien: Your Honor will then permit me to take up an examination of the witness preliminary to my objection to its admissibility?

The Master: Yes, if there is anything bearing on the point.

Mr. Chambers: Yes, and I want to examine.

Mr. Ransom: We will have the files and papers taken from the company's record showing the details on these things, which were 10016
made up from this company's books, not from some other company's books. The fact that he verified them from some other company's books was fortunate—that he was in a position to do that.

The Master: Where is the supporting data showing the amount of gas you purchased from the Astoria? That is, a receipt clerk, or something of that sort who measured the amount of gas that came through a certain pipe?

Mr. Ransom: I have not that here. I can produce those records to-morrow morning.

The Master: I have understood from this 10017
witness, and understood from other witnesses, that it was an estimate based on the requirements of the other companies, as to what their output was; that there was not any such system that related to coal or oil purchased; that you had not a receipt sheet showing that you received at this time one hundred tons of coal or one hundred gallons of oil.

Mr. Ransom: Of course gas it is not something which is brought in a barge or weighed

10018 on a scale, or brought into a tank and measured with a rod.

Mr. Chambers: Measured just the same, though.

The Master: If you have to arrive at a result, taking the operating figures of other companies, then you have not that in your records. That is all there is about it. Do I make myself clear on that?

Mr. Ransom: I think I understand.

The Master: If your records show that at the tunnel at 132nd Street and Locust Avenue,
10019 or whatever that is, they measured the amount of gas coming from the Astoria Company, so many feet, I should take your books as evidence of the fact that you received from the Astoria Company so many cubic feet, and paid them so much money. Then the question would be as to the reasonableness of this charge. But there is no such evidence.

Mr. Ransom: Our records show that we sold 18,960,672,800 feet of metered gas.

The Master: Yes, and your records likewise when the Consolidated Gas Company used a certain amount of gas in its own plant. Your
10020 output shows three per cent. of condensation, a certain percentage went into slow meters, and a certain percentage into something else—leakage. That shows your total requirements. Your evidence will show me how much you made.

Mr. Ransom: Yes.

The Master: That will show that you got gas from other companies.

Mr. Ransom: Shows how much we got.

The Master: Shows the balance that you got from other companies, does it not? 10021

Mr. Ransom: Yes.

The Master: Does it show how much you got from the Astoria? No, not until you begin to estimate it by the output or requirements of other companies.

Mr. Ransom: I do not see that, your Honor.

The Master: If you gentlemen will sit down I will see if I cannot bring that right out.

Mr. Chambers: Before you start to bring it out, as to the Astoria Company, he puts under his cost of production, return on capital, which is not an operating expense. 10022

The Master: I do not care about that. I am talking about the amount of gas bought. Let me see if I am right about this, Mr. Teele.

By the Master:

Q. The Consolidated Gas Company sells a certain quantity of gas per year?

A. Yes.

Q. And uses a certain quantity of gas per year?

A. Yes.

Q. And loses a certain quantity by slow meters, leakage and condensation?

A. Yes. 10023

Q. Take that as a unit for easy discussion as one million cubic feet?

A. We have not that before us.

Q. Do not let us take the large figures, because it is hard to follow. I am going to take as the subject for discussion one million cubic feet of the requirements of the Consolidated Gas Company. Their records show that they made a half million cubic feet themselves, and that means they got a half million elsewhere, does it not?

10024 A. Yes.

Q. The records show that, do they not?

A. Yes.

Q. The records likewise show the amount of gas they got from the Astoria plant that was metered at Locust Avenue, do they not?

A. Metered at the station.

Q. At the station?

A. At the works.

Q. The Astoria works, you mean?

A. At the Astoria works, the station meter. All gas is metered as it passes into the holders.

10025 Q. Does all the gas made at the Astoria plant come through that one main? Can it come anywhere else?

A. I do not think I can say from my own knowledge.

Q. Well, let us assume for the purpose of the discussion——

A. My understanding is that it is all delivered either through that main or through the main running via the New Amsterdam works into 71st Street but I am not——

Q. Let us assume now for the purpose of this discussion that all of the gas from the Astoria Com-

10026 pany metered at its works is delivered to the Consolidated. Then your books would show definitely the amount received from the Astoria, would they not?

A. They would.

Q. Let us assume that we had a half a million, that we got from other companies?

A. Yes.

Q. That the records show that 200,000 came from the Astoria. That leaves 300,000 to come from other companies?

A. Yes. 10627

Q. The other companies transferring gas are the Standard, New Amsterdam and the Mutual; is that right?

A. Yes.

Q. What record is there in the files of this company that shows how much gas came from the Standard? Is there any such thing as a receiving clerk or a measuring clerk, or anybody who could say that on a certain day, or within a certain month, a certain amount of gas came through certain mains into the Consolidated plant?

A. No, there is not. 10628

Q. How do you get it?

A. They have to determine that by balancing the amount required by different companies against the amount sent out.

Q. To do that you have to get into the records of other companies?

A. Reports are made to the Consolidated Company and are in their files.

Q. In order to verify their reports you have to go into the other companies' files?

A. Yes.

Q. In other words, you cannot tell the way you can with a ton of coal, where a certain clerk could 10629
testify, if called, that he got a certain amount of coal, can you?

A. The particular number of cubic feet of gas coming from any particular company of course cannot be identified.

Q. Let me get this clear to you, and as an expert accountant you can probably clarify the situation for all of these gentlemen, including Judge Ransom. When I take a book entry that a ton of coal was sold by Berwind & White to the Consolidated,

10030 and instead of calling a witness to say that he received that amount of coal on a certain day I take the regular books of account showing that the receiving clerk entered it and when he entered it on his sheet, that that was certified by the superintendent of the works, that that came through, I am getting when I get my book entry substantially what the witness will testify when he says, if called as a witness, "I got the ton of coal", won't I?

A. Yes.

Q. When I take the fact that there were purchased from the Standard Gas Light Company a million cubic feet of gas, I am not taking an entry
10031 that I can call some witness to testify "I got a million cubic feet of gas"?

A. No, because you are handling a different commodity, and the tabulation of it has got to be made in a different way.

Q. Precisely. So I cannot take an entry and then rule on the oral testimony of the witness, can I?

A. Well, I do not know how far your Honor can go in that direction.

Q. I mean as a practical accounting proposition, can I take an entry in the book as evidence of a fact in the same way that I could call a witness to say,
10032 "I got a thousand cubic feet of gas"?

A. No, you have to have all the factors before you in making your determination.

The Master: Have I made my situation clear? Whether I take this tabulation as now offered, or whether I require you to subdivide it, the fact remains that I cannot accept your records, your books, as indicating the amount of gas you received from these companies, because in the nature of things I have got to have other elements to consider. That is what

I am trying to get at. I do not think it will 10033
delay you. If I thought it would, I would rule now that I would take this tabulation, in the light of what I said, giving you notice that you have to do the same things anyhow.

Mr. Ransom: This further thing, though, with respect to gas in this Manhattan system, has not been taken into account; those figures as to gas which passes from one company to another under given conditions, are passed upon by the appropriate officers of the company. They have a department where tab is kept on those things continuously, where the necessary certifications are made. It does 10034
seem to me that with respect to the fact—that is, with respect to the fact of the outlay or the charge—the books and their tabulations are admissible. I do not contend that they carry convincing proof of the reasonableness of the charge which might——

The Master: I meant of gas actually delivered.

Mr. O'Brien: That is the thing,—the fact.

The Witness: You understand that this is not a conclusion of my own?

The Master: Yes, I understand that.

The Witness: That all these transactions are 10035
passed upon?

Mr. Ransom: We are not offering now a tabulation of the amount of gas delivered. We are offering a tabulation of the amount transferred.

The Master: If I can get this perfectly clear on the record, that if I receive this tabulation it is no evidence at all that you have got the quantity of gas that you paid for, nor of the reasonableness of the charge, I will take it subject to being connected.

10036 Mr. Ransom: Well, I am willing that he should take it subject to being connected.

The Master: Do you understand that I am not taking it as evidence of the amount of gas used?

Mr. Ransom: I understand perfectly your view, and we except to that view, but we shall take it and we shall connect it.

Mr. O'Brien: Your Honor, there are a number of things I want to bring out that have not been touched upon by Mr. Chambers.

Mr. Chambers: I had not made any objection or had an objection recorded.

10037 Mr. O'Brien: I want to request the privilege of cross-examining the witness before making my objection.

The Master: That is denied.

Mr. O'Brien: I will state that the matters on which I intend to examine the witness preliminary to making my objections are matters not yet covered either yesterday or this morning.

The Master: That is denied.

Mr. O'Brien: Exception.

Mr. Chambers: I had not completed my examination.

10038 The Master: You want further preliminary examination?

Mr. Chambers: Yes.

The Master: That is denied.

Mr. Chambers: Exception.

Mr. Chambers: I object to the admission of this paper on the ground that it is incompetent, irrelevant and immaterial, is not a tabulation of the books which have been admitted in evidence; that the witness has testified that the paper was made up from data, records and other papers not admitted in evidence; that it

contains the witness' judgment and discretion 10039
in apportioning certain items to the gas business and certain items to the non-operating branch of the business; that it contains secondary and hearsay evidence; that it is confusing and misleading so far as the issues in this case are concerned.

Mr. Hayward: I would like to make a request here to cross-examine the witness before making my objection.

The Master: Your request is denied.

Mr. Hayward: Exception.

The Master: Do you wish to make an objection? 10040

Mr. Hayward: I object to it on the ground that the tabulation is incompetent, irrelevant and immaterial; that it is not a tabulation of any data, books or evidence, which themselves might have been admissible; that it is a tabulation, in part, at least, of books which were erroneously admitted in evidence, the books themselves not being books of original entry or competent in this case; that it contains matter, conclusions, deductions, etc., of the witness which are not found either in the original data or in the books themselves.

The Master: Objection overruled. 10041

Mr. Hayward: Exception.

Mr. O'Brien: I object, your Honor to the admission of the schedule in question on the ground that it is incompetent, irrelevant and immaterial, and particularly on the ground that it is based on books which have been received in evidence, which, it is our contention, should never have been received, for the reasons stated when we made the objections to the receipt of said books. Upon the ground that the examination of the witness Teele indicates

10042 that his schedules are based upon matters extraneous to the books which have been received in evidence, that such schedules have been in part based upon matters which are not fundamental records of dollars and cents, but deductions made or conclusions drawn by some one in the company, adjustments of figures, arrangement of mutual splitting of expenses.

Upon the further ground that the examination of the witness indicates that there are figures and there are computations that were made intermediate between the books received in evidence, and the schedule in question, which

10043 figures have not been put in evidence and have not been explained.

On the further ground that the schedule now being received in evidence is being received as some evidence of facts that have not been established, and which are assumed to be proven facts when the schedule is being received. Illustrating that, I refer to the proposition, and I have in mind, of course, your Honor's reservation and restriction in receiving the schedule, the reservation that it is not to be received as proof of the fact that a certain amount of gas has been received by the Complainant Company, under the total "Transferred Gas", but notwithstanding your Honor's

10044 reservation upon that subject, that the receipt of these schedules will be taken, to some degree, at least, as evidence of facts that are not proven.

Coming down particularly to the first page, I object to this schedule, to the receipt of this schedule on the ground, referring to page 1 of said schedule, that the sales of gas narrated here, have not been proven, that the papers showing the purported sales of gas have not

been offered in evidence; that there is no in- 10045
dication here as to whether these sales have actually been made, and that that is the correct total of said sales.

That as to miscellaneous operating expenses, and particularly the item, "Rent from gas appliances", that there are no proofs before the Court as to what the rents are, as to the fact that the gas appliance business is a necessary part of the gas industry conducted by the complainant. There is no indication that the gas appliance business has been segregated in accounts, which will show all the expenditures involved in said business, separated from the 10046
operating expense of this company.

I further object to the schedule being received on the ground that there is no proof before the Court as to gas residuals produced where reference is made to Schedule C; that there is no proof before the Court by which the receipt of residuals from the affiliated companies to the Complainant Company has been checked up and verified.

There is no proof before the Court that there was a residual expense, or that the residual expense referred to here on this first page was actually incurred. 10047

Further, proceeding with this page, the gross profit from sales of gas appliances, schedule 4, —that very statement itself is a conclusion that there is a profit. When you refer to profit, it is a conclusion on the part of somebody that there is a profit, and the profit from the sales of gas appliances may not be shown from the records that have been received in evidence, for the reason that the witnesses who have already appeared for the complainant company have

10048 indicated by their testimony that the accounts kept in the operating ledger and the operating journal, and the other books, do not embrace all the expenses in any one account or in many accounts, do not embrace all the expenses involved in handling the gas appliance business.

I object to the receipt of the schedule on the further ground that there is here set forth the interest on bank balances, whereas, the books showing the bank balances have not been received in evidence.

Further on the ground that there is no statement in the shape of sworn testimony that the
10049 bank accounts referred to are the only accounts of moneys owned by the company; so that the testimony on that point, even if this page were admissible, is not complete, and could not be received.

Coming to the rentals of jointly used facilities, I object to the receipt of this schedule for the reason, first, that jointly used facilities are not properly a part of the gas making industry of the complainant company. There is no proof before the Court that the complainant company actually needs the facilities that are jointly rendered, for the conduct of its own business,
10050 and that it is a fair assumption from the testimony already in that these facilities have been created and are being maintained by the complainant company solely for the convenience and the profit of the affiliated companies.

Further, upon the ground that the figures that are here set forth under the title, "Rentals of Jointly used Facilities" are entirely matters of speculative figuring upon the part of somebody connected with the company; that they involve factors in computation

that do not appear in the books that have been 10051
received in evidence, and that they have not been proven, and that the correctness of them has not been shown, and that the description of the computation has been made only in the most general way.

Coming to the matter of taxes, I object to the schedule being received on the ground first that the figures are purely estimates. The figures were shown to be really the figures of the tax, in some instances of the tax of 1919, and not 1918; that the payments for the year 1918 relate to the year 1917; and the statement of the counsel and witness has been that they are not 10052
offering the payments made in 1918 for taxes as part of the operating expenses, but are using the taxes of 1919, as tentatively figured out on the books, for the year 1918.

Further, that the items in question relating to taxes include certain elements that are clearly not part of his case, the interest on unpaid taxes, elements that have been ruled out previously by the courts in connection with the complainant company.

The Master: And that I shall probably rule out here.

Mr. O'Brien: Again, on the question of in- 10053
surance and repairs, that there has been no proof before the Court of any necessity for the insurance. That there is no proof before the Court as to the reliability of figures for insurance, as to the manner in which the policies were taken out, whether they were one or three years, what deductions, if any, were made, or whether reductions or rebates were made by reason of the manner in which the contract was made, and in which the payment was made.

10054 Further, that there is no proof before the Court in the shape of the policies themselves as to the insurance, the introduction of which would be absolutely necessary as a condition precedent to the receipt of any records of account covering the matter of insurance.

As to the repairs, on the ground that there is no proof before the Court as to the fact of the repairs.

Coming to the question of repairs and the construction work of the company, I object to the reception of the schedules, for the reason that they only generalize in the most aggre-
10055 gate and general terms figures that are presumed to be in the books already in evidence.

Further, that the examination of the witnesses already had, and the informal examination made by the Court at the offices of the complainant company on Tuesday, September 16th, indicated that the figures in these books of account are not the actual costs of doing the work—construction work I refer to—but are the actual costs plus certain amounts that had been added to the figures before they were put in these final books of account offered in evidence; that as to those figures we have not had
10056 offered, either at our disposal in the offices of the company, or in any papers introduced in evidence, a statement as to what those amounts are; in other words, that *in transitu*—we will say for instance, the main book, copies of which were shown to your Honor on Tuesday, September 16th, at the hearing held at the offices of the company, that *in transitu* certain overhead expenses and other items at the will and the whim and discretion of the officers of the company have been added to these amounts

before they finally found their way into the 10057
final books of account that have been received in evidence; that the computations have not been spread before us, and that they have not been even referred to by counsel for the complainant when he attempted to offer these books in evidence.

Now, commissions for others' gas—that there is no proof before the Court that there were commissions allowed on other gas companies' gas.

Now, coming to "Expenses" on this page, I object to the receipt of this schedule—I am referring particularly to the first page now— 10058
because production cost is a conclusion. Cost of production is the very finding that the Court is asked to make, and therefore may not be made by a witness. Cost of production here, and the figures setting it forth, should not be received, because there is no proof before the court that they comprehend all the cost, or less than the cost of production or more than the cost of production.

I make the same objection as to the next item, "Cost of Distributing".

As to the uncollectible gas bills, I object to its being received in evidence, first, because 10059
there is no proof before the Court of uncollectible bills. There may be a figure in a book charged up in some account called "Uncollectible Bills", but there is no proof before this Court that one dollar, or ten thousand dollars, or one hundred thousand dollars could not be collected, and receiving the schedule in evidence is just the same as receiving any account that might cover the same matter, without proof of the fact.

10060 I may say in passing that that matter embraces a great many elements. It embraces proof of the effort made to collect bills, proof that the system by which they attempt to collect their bills, where they have the right to exact and do exact deposits before they open an account; where they have the right and exercise the right to shut off the appliances and sources through which gas is supplied to customers. All of these things are elements of proof which must be in this case before you can receive a book or authentic original record covering the matter of uncollectable bills.

10061 As to renewals and replacements, I object to that because there is no proof before the Court as to the proper segregation of these accounts or their verity or reliability. Secondly, because replacements and renewals embraces also a legal conclusion. On the ground that the only way in which that figure could be received here is after proof that the method that they use in allocating a certain item of expense to renewals and replacements on the one hand, or to operating expenses and repairs on the other, would have to be before the Court; that the renewals and replacements likewise involve

10062 overhead expenses that are not shown in the original records that indicate those expenses, and that, therefore, we are receiving here something without the underlying evidence being in the case, or introduced in evidence, or even being placed at the disposal of the investigators for the defendants.

Now, coming to interest on consumers' deposits, I object to that for the reason that it has not been shown here what the consumers' deposits are; it has not been shown that this

amount of $40,905., purporting to be charged 10063
up to interest on consumers' deposits, represents the interest upon thousands of dollars which remain over after the trial of the original case, and the distribution of the amount made by Commissioner Shields. There is no indication that this includes that, and therefore, if it does not, it is incomplete, and if it does include it, it includes something that should not be charged in this case, interest on moneys held by the company, without any evidence being disclosed that they were making any effort to have these moneys returned to their rightful owners.

I object to the schedule, and particularly this 10064
page, on the further ground that the item, "Amount not applicable to gas business" has been not proven by any reliable data. I am now talking about the correctness of the amount. On the ground that it has not been shown by the witness Teele or the witness Brundage, that this separation in these columns in the schedules applicable to complainant's business, and not applicable to complainant's business, has been made on any account in the books. In other words, it is something extraneous to the books received in evidence, 10065
something extraneous to the papers or records or books which are supposed to be reflected in the books offered in evidence. It is from some extraneous documents, or based upon some direction from Mr. Carter, or some other officer of the Company, made to the witness, a direction to separate those amounts, and therefore, that it is now being received not as a reproduction in summarized form of the books received in evidence, but as original evidence of the wit-

10066 ness on something that he acknowledges frankly he knows nothing about. I object to the schedule being received, this particular page, on the ground that it has here a certain amount set opposite the statement, "net loss from gas business". That is a legal conclusion. In all its terms it indicates that it is a legal conclusion, the very finding your Honor has to make in this case; and therefore, it may not be made by an account.

Now, those objections generally expressed, cover many of the objections which I would make to the individual pages.

10067 The Master: Well, they run to the individual schedules.

Mr. O'Brien: They run to the individual schedules.

The Master: I think what you have said about the items appearing on page 1 run to the individual schedules.

Mr. O'Brien: I object to the receipt of the schedules on the further ground that when the witness Teele was put upon the stand he was asked about how he made up these schedules, he told us that he took these books of account, and that in some instances his men went to underlying records, the reports made to the

10068 main office, and that they followed them up. Inquiry being made by counsel for the defendants and your Honor as to whether or not the witness Teele had verified the reliability of the bills or invoices by comparing the bills with the receipts and records of the subordinate employees of the complainant company, and further as to whether or not he had in the matter of the commercial offices made comparisons between the first and original records of the

subordinate employees with the return from 10069
those commercial or branch offices to the complainant company's main office, and whether when he was asked whether or not he had made any comparisons or had checked up and tallied the time books in the works with the time reports and pay rolls returned to the main office, he stated that he had not, and your Honor required him, and adjourned for that purpose the trial of this case for several days, to go to those different branch offices, to the works, get their records, and make the comparisons that would satisfy your Honor. The adjournment being taken for that purpose, he was reproduced 10070
upon the stand, and only in the most general way, and without my being allowed to cross-examine him as to the completeness of that examination, as to the proposition whether the tests were sufficient to satisfy a reasonable requirement in this case, he in only a few general answers to questions has covered that here, so that up to this time, so far as that examination goes, we are in the dark, we do not know how far it went, or how far such a basis might be accepted.

Further, that there is no indication in the record as to the particular stations, what par- 10071
ticulars of the work he took for the purpose of making these tests, and further that the tests as made, considering the large volume of items to be covered, were not sufficiently extended, even if they were correctly done, and even if they were not hurriedly done, as they were presumably hurriedly done, would not be sufficient to meet the requirements of this case. That was one of the reasons why I asked the

10072 right to-day to cross-examine the witness as to the preparation of this schedule.

Now, I make the objection on the further ground that in taking the stand you do with regard to this schedule you have followed a practice from the beginning of the case, both with regard to the books received in evidence and with regard to the inventory that we clamored for from May 16th down to a few days ago, and in regard to many other matters that have come out, like the manner in which the 15th Street office was being conducted, the manner in which diagrams were gotten up, and

10073 so on, the manner in which the diagram of yesterday was received, showing the mains running up First Avenue, and the 48-inch main through the Bronx, your Honor has taken the position in all these matters that you will receive them in evidence, and tell the defendants to go ahead and check them up. That procedure and that ruling reverses in effect the rule of the United States Supreme Court in every rate case that has been before it, requiring the strictest kind of proof, and putting the burden of proof upon the complainant. So exacting has been that rule of the United States

10074 Supreme Court that where in one case a litigation came up upon demurrer, and where in another case it came up on an agreed state of facts, the Court sent it back and refused to grant the relief that was requested, on the ground that the proof was not sufficient to sway the Court.

Now, if we are to proceed with the other witnesses in this case as we have with the witnesses already received, and papers, summaries, documents, statements are to be offered in evidence,

subject to our going up and making examina- 10075
tions and checking them up, undertaking work which has required months and months of preparation on the part of the complainant, and which would require years of investigation on the part of the defendants, your Honor's ruling in effect is reversing the rule of the United States Supreme Court in these cases, and giving the complainant all of the benefits of a lot of presumptions, and is throwing upon the defendant the burden of proof, and of course I hold that to be contrary to the rule which obtains in these cases. We have the right to proceed with this case without incurring any 10076
expense, whatever may have obtained in rate cases, and the practice to the contrary notwithstanding. The practical side of it does not figure that presumably we will hire somebody and look into these accounts. We have the right to proceed here and say we will not spend one penny until they have proven their case; that we will not put a statistician to work, that we will not incur expense for a large number of bookkeepers to go in and make these examinations until they have proven their case. We haven't the right to say that the complainant must sustain its proof without expecting us, 10077
while the complainant is proving its case, to dovetail into its work, and afford it support and aid in the shape of checking up a lot of documents and papers to which it refers us during the course of the trial, without the necessary underlying proof.

Hence, at this time I record my objection, asserting that if we proceed that way the conclusions, whatever they may be, at the end of

10078 the case will be but a house of cards and must fall to the ground, a house of presumption.

The Master: There won't be any such finding in this case. I venture to say that when I find a fact in this case as having been proven, that fact is going to be accepted by the Supreme Court and probably by the counsel for defendants, as having been proven.

Mr. Chambers: That is going pretty far.

The Master: Yes, that is going pretty far, but that is pretty nearly what it will amount to.

Mr. O'Brien: I offer the further objection to the schedules on the ground that they are
10079 self serving declarations of the complainant or others affiliated with the complainant.

On the further ground that the ordinary rules of proof and rules of evidence which might obtain in an ordinary rate case must be exercised with even still greater caution, with still greater exaction upon the part of the Court as to those transactions between the complainant company and its affiliated companies, companies over which it has complete domination and control.

I state to your Honor at this point that I believe the subject into which we have gone
10080 to-day was properly considered a very grave matter by the Court, for the reason that I think when we come to straighten that thing out, we have the crux in this case.

Mr. Chambers: The milk in the cocoanut.

Mr. O'Brien: Here is a matter that so far as the proof is concerned——

Mr. Ransom: Is this a summing up or an objection?

Mr. O'Brien: I am objecting to these schedules, notwithstanding your Honor's ruling as

to what they must offer in supplement to the paper already received, and I want to show the danger of receiving the paper with those restrictions. 10081

The Master: I am not telling them what they have to supplement. I am telling them over and over again, that they have to satisfy me, practically beyond a reasonable doubt, that their claim is correct.

Mr. O'Brien: I want to show to your Honor just what we are up against.

Mr. Ransom: I object to anything more than a statement of objection at this time.

The Master: Oh, well, let us have it. 10082

Mr. Ransom: If you want argument——

The Master: No. I think it might be valuable for counsel for the complainant to get Mr. O'Brien's views about all these things.

Mr. Ransom: We have had them.

The Master: You may find that there are suggestions made by Mr. O'Brien that you may deem it wise to meet with proof before we adjourn.

Mr. Ransom: It has been a helpful discussion.

Mr. O'Brien: Your Honor will recall my statement made in argument on an important legal question, that I deem that I have something more than a duty here, than as a partisan advocate for one of the defendants. 10083

The Master: Have you completed your objection?

Mr. O'Brien: I believe that the money and time spent in this case ought not to be abortively spent. We could rest on objections, and pile up our objections, and come in after the case is closed and take advantage of them.

10084 The Master: The danger you run there is that they may prove up their case before they get through.

Mr. O'Brien: I feel frankly and candidly, that we could show them the light that they need in this case, going along. If these things are lacking in proof the case of necessity falls.

Getting back to what I started to say about the relations between this company and its affiliated companies, the Court will exact a far better kind of proof and a larger quantity of proof as to the relations between those companies, than it would between them and some

10085 seller of pipes and fittings, or a seller of coal, or something else they may use. They control them, they dominate them, and your Honor can see right away that with these twelve or fifteen different corporations affiliated with this company there is set up there the machinery for hoodwinking the public if they see fit to do it, the machinery for camouflage, the machinery for jugglery of figures.

The Master: What is the use of discussing that?

Mr. O'Brien: The point is that with that opportunity that presents itself by the com-

10086 plainant owning these different companies, there is far greater need of caution, a far greater exaction of proof than there would be in an ordinary case.

So, coming back to the elements that enter into the computations of gas, we have there certain factors that are variable, some that are based on judgment, some that are more or less speculative, and then we have certain factors that you might say depend upon the meters. You can see right away that to support Mr.

Teele's accountancy exhibit, there is not only necessary an examination of the accounts of these other companies, the records and accounts, but we have got to have shown the reliability of the meters that measure the gas that goes out; in other words, the send-out of the several companies who sell gas to the complainant company. Without that you cannot receive in evidence a schedule that sets forth that a certain number of cubic feet of gas was delivered in the months of January, February and so on, 1918, to the complainant company. 10087

I was going to go with some particularity into the pages, but I think I have summarized it. 10088

The Court: I think that your attitude with reference to this schedule is fully spread upon the record.

Mr. Hayward: I want to say that the objections previously made upon the record are made upon the theory that the occasional or casual so-called tests that this witness made when he took a certain month at a certain plant, did not change the character of the tabulation at all; in fact, it did not make a tabulation of underlying data, but it continued to be after those tests, as useless as before, because it was a tabulation of the books that in themselves were useless. 10089

Mr. Chambers: I just want to add in amplification of Mr. O'Brien's objection, that it shifts the burden to the defendants.

The Master: There is no shifting of burden, you need not amplify that.

Mr. Chambers: And that the defendants cannot therefore financially bear the expense of carrying such a burden, if we have to check this up.

10090 The Master: I am not going to shift any burden in this case. The burden is on the complainant. The motions made by various counsel are denied and an exception allowed, and the paper received in evidence as Exhibit 205. Have you any further witness at this time, Mr. Ransom?

Mr. Ransom: Mr. Woods had to go out on the plant, and while I have sent for him, he has not yet returned. I do not care to start with another witness until we have finished with those already under examination.

The Master: I will adjourn the hearing
10091 until tomorrow morning at 9:15. The cross-examination of Mr. Teele is suspended until September 30th, at 9:15.

Adjourned to Friday, September 19, 1919, at 9:15 A. M.

Last Complainant's Exhibit 283.
Last Defendants' Exhibit W.

10092

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 10093

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 19, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 10094
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Ransom: If the Court please, at the session held at 130 East 15th Street on September 16th, your Honor directed that there be furnished to the defendants further itemization of three items contained on page 150 of the schedules of property, three in addition to gas appliances, of which the particular itemization was furnished yesterday. I have to-day the particularized statement on automobiles owned and used as of December 31, 1918, of horses, wagons and harnesses as of that same date, and scows. I hand the original to the Master, and I furnish copies to each of the defendants. 10095

Mr. Chambers: You don't say anything about the ages of these automobiles.

The Master: No. Look at them.

10096 LEWIS B. GAWTRY, called as a witness in behalf of the Complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Gawtry, where do you reside?

A. 58 East 66th Street.

Q. What is your position with the Consolidated Gas Company?

A. One of the vice-presidents.

Q. And how long have you been connected with the Consolidated Gas Company?

A. Twenty-five years.

10097 Q. In what capacity did you first become connected with the Consolidated Gas Company?

A. I started as purchasing agent.

Q. Did you organize the purchasing department of the company?

A. I did.

Q. At that time?

A. Yes, sir.

Q. And have you since had supervision over that department?

A. Yes.

Q. What were the different capacites which you fulfilled with the Company? Were you assistant

10098 secretary?

A. I was assistant secretary.

Q. When did you become that?

A. In 1898.

Q. And then you were secretary?

A. 1900.

Q. And then you became one of the vice-presidents?

A. 1902.

Q. And since that time you have been the vice-president in charge of the purchasing department? 10099

A. I have.

Q. And that department has been under your direction and supervision for the past twenty-five years?

A. It has.

Q. Will you describe generally the functions of this purchasing department and the work which goes on in this department under your supervision?

A. When certain supplies are needed by different departments, a requisition is drawn, signed by the superintendent, approved by the head of the department. That requisition is sent to the department, the purchasing department gets bids, so far as possible, competitive bids, those bids are gathered and the order is made, four copies made of that order and one sent to the person from whom goods are purchased, one is kept by the purchasing department, one is sent to those who order the supplies and the other to the accounting department. 10100

Q. This department purchases the materials and supplies for the Consolidated?

A. It does.

Q. And when you get a requisition from a department for particular materials and supplies you make the necessary market investigations? 10101

A. We do.

Mr. Chambers: I object. Let him state what he does.

The Master: All right.

Mr. Chambers: Without drawing the conclusion. I move to strike that out.

The Master: Objection overruled. Motion denied.

Mr. Chambers: Exception.

10102 Q. Your department, or what department, issues the orders?

Mr. Chambers: I suggest the witness tell how this goes on.

Mr. Ransom: Well, I asked him what department, your department, or what department, issues the orders.

The Master: Question allowed.

Mr. Chambers: Exception.

The Witness: Purchasing department.

The Master: Of which you are the head?

The Witness: Yes. There is a purchasing

10103 agent under me who reports to me, I know all about it.

The Master: He issues the orders?

The Witness: He issues the orders.

The Master: What is his name?

The Witness: Mr. Macklin.

Q. From whom do you receive requisitions for materials on which the purchasing department under your direction issues purchase orders?

A. The works, street department, fitting shops, branch offices, general offices.

Q. By whom are such requisitions signed?

A. The superintendent of each department,

10104 O. K.'d by the man in charge.

Q. The local superintendent?

A. The local superintendent.

Q. He signs?

A. He signs.

Q. And then is the requisition passed on by the head of the department?

A. It is.

Q. Ordering the materials?

A. It is.

Q. Now, do you handle purchases for other com- 10105
panies?

A. Yes.

Q. For what company or companies?

A. Astoria Light, Heat & Power Company, National Coal & Coke Company.

Q. Then you purchase all of the materials and supplies for the Astoria Light, Heat & Power Company?

A. We do.

Q. That is your department handles the purchase?

A. Yes. 10106

Q. Requisitions come to your department?

A. They do.

Q. And are handled in the way in which you have in part described as to Astoria?

A. Correct.

Q. Now, are there similar purchases made through your department by the National Coal & Coke Company?

A. Yes, we purchase for them.

Q. Well, what is the nature of the purchases for them?

A. Chiefly feed, horse feed, horse shoes, harness, wagons, repairs to wagons. 10107

Q. Has there been any volume of such purchases during 1918?

A. The company was closed down practically in 1918, because we sold no coke.

Q. What about other companies, other gas companies of the Consolidated system, and in addition to the Astoria, what if any relation has your department to obtaining orders for them?

A. We act in an advisory capacity to the other companies. We buy in larger quantities than they

10108 do, and they come to us and say, "Can we get a better price from you, or what is the ruling market, where is the best price to be had."

Q. Does each of these other companies have its own purchasing department?

A. They do.

Q. And place their own orders?

A. Place their own orders.

Q. You advise as to where they can advantageously purchase?

A. We do.

Q. You give them information as to market

10109 prices?

A. Yes.

Q. That applies to what companies?

A. To the New Amsterdam Gas Company, Standard Gas Light Company, Mutual Gas Light Company, Central Union Gas Light Company, Northern Union Gas Company, The New York and Queens Gas Company.

Mr. O'Brien: Westchester?

The Witness: Westchester.

Q. What class of supplies does that refer to?

A. The usual supplies that we purchase and use in the gas making business.

10110 Q. Are these requisitions which come to you upon printed forms?

A. They are.

Q. And show quantities and descriptions desired?

A. Yes.

Q. What is the policy of the company and method of the company with respect to determining where orders shall be placed.

Mr. Chambers: I object to that.

The Master: The question is not finished.

Mr. Chambers: That is a question we are not interested in. 10111

The Master: The question is not finished.

Q. What do you do? Do you seek bidders? Do you have any competitive bidding in any instances?

Mr. O'Brien: Do we understand that your other question is withdrawn? I object to it if it embodies the other question.

The Master: The other question is withdrawn.

Mr. Chambers: He has three questions in one now.

The Master: The former questions are withdrawn. You better reframe your question again. 10112

Q. What is your practice with respect to determining to whom or with whom order shall be placed?

A. We get competitive bids in all cases except in certain——

Mr. O'Brien: I move to strike out the answer.

The Master: Let the witness finish his answer.

Q. You say you get competitive bids in all cases except what? 10113

A. Except on certain patented materials and certain materials where there is no competition.

Mr. O'Brien: If your Honor please, I move to strike out the answer on the ground that the witness has made a conclusion when he speaks about competitive bidding. He may state what they do and the procedure they go through, but as to competitive bidding, stamping anything as competitive bidding, is a legal conclusion.

The Master: I will permit the statement to stand.

10114 Mr. O'Brien: Exception.

Mr. Chambers: They called Mr. Woods the other day and started a little bit with him and now they call this man and start a little bit with him.

Mr. Ransom: This witness will be very short.

The Master: They are going to finish with this witness, because Mr. Woods had not arrived, and I asked them to call another witness. I did not want to wait for Mr. Woods.

Q. In the case of the making of contracts for
10115 supplies what method is followed so far as competitive bidding or otherwise is concerned?

Mr. O'Brien: Your Honor, I object to that question again on the same ground. Whether some procedure is competitive or not would depend on just how far they go into the market.

The Master: Objection overruled.

Mr. O'Brien: I think it calls for a legal conclusion.

The Master: Objection overruled, with exception.

A. We study the markets generally of all supplies that we use, all supplies we purchase. We
10116 go to the people who have these goods for sale, get the best supplies, the supplies best suited to our purposes. We ask bids from those. As a rule we do accept the lowest bids. Of course, we do not ask bids from people whose supplies we would not use.

Mr. O'Brien: I move to strike out the answer as not responsive and embodying a legal conclusion.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. Mr. Gawtry, a purchase order goes from

your department to what officer of board or committee, if any, of the company? 10117

A. Executive committee.

Q. With or without a recommendation from you?

A. If it is over a certain amount, in large amounts, it goes with a recommendation from me.

Q. And if it is in a minor amount, it goes with whose recommendation?

A. It is purchased outright, below $1,000.

Q. But all of these orders pass through your hands?

A. They do.

Q. You do not have anything to do, or do not have charge of the negotiation of construction contracts? 10118

A. Nothing.

Q. That is handled by whom?

A. The construction department. It is done by W. Cullen Morris.

Q. The engineer of construction. But in the case of other materials, it is handled in the manner you described?

A. It is.

Q. After the invoice on an article purchased in the manner which you have described has been received, does that invoice in any way come back to you to be passed on? 10119

A. Not to me personally; to the purchasing department.

Q. It goes back to the purchasing department?

A. The price is checked by them.

Q. And the prices and quantities are reported?

A. The quantities reported by the superintendent of the local branch, who receives the goods.

Q. That is, the receipt of materials is kept track of by the local superintendent?

10120 A. It is.

Q. The prices and descriptions shown on the invoices are checked by your department?

A. Right.

Q. When any material is ordered through your department in the manner you have described, is the accounting department advised of it in any way?

A. It is.

Q. How?

A. A copy of the order is sent out and sent to the accounting department.

Q. In addition to what you have described, do
10121 you from time to time advise the heads of the departments as to the advisability of making requisitions?

A. We do.

Q. Just describe what your practice is in that respect?

A. As a concrete example, there is talk of a shutdown in the steel industry. We advise our different departments if they need certain supplies for repairs, we should cover ourselves and take care of any lack of delivery there may be in the next few months.

Q. That is, you keep track of market conditions?

10122 A. As far as we can, yes.

Q. And of delivery conditions?

A. We do.

Q. And manufacturing conditions?

A. That is our work.

Q. And you advise departments as to the advisability of making requisitions?

A. We do.

Q. With reference to those conditions as you from time to time ascertain them?

A. General conditions, conditions of delivery,

where there are poor deliveries by railroads, poor manufacturing conditions, and so forth. 10123

Q. So you not merely pass on requisitions when they come to you, but you recommend the making of requisitions?

A. We make a complete and thorough study of supplies as far as possible.

Mr. O'Brien: You keep tabs on the prices from year to year? You have that all formulated?

The Witness: We do.

Q. That is, for the last twenty-five years you have kept track of the materials used by this company? 10124

The Master: Mr. O'Brien's question had reference to the records kept. You kept records of that?

The Witness: Yes.

The Master: So if we go back four or five years, you can tell us what the prevailing price of coal was?

The Witness: Oh, easily, sir.

The Master: Or gas or oil.

Q. Just what have you done in the last twenty-five years and in recent years with respect to keeping track of prices? 10125

A. We have elaborate records in detail——

Mr. O'Brien: Are you qualifying him as an expert, or is this something that will have to do with the concrete testimony of the witness?

Mr. Ransom: Well, both.

The Master: In what respect do you qualify him as an expert?

Mr. Ransom: Showing his general knowledge of prices.

10126 The Master: As part of his duties with this company?

Mr. Ransom: Yes, showing what he did in the course of business and what method——

Mr. O'Brien: Is it with a view to asking questions of him apart from his official connection? Is it with a view to showing him as an expert and laying the foundation for expert testimony?

The Master: We will not need expert testimony in this case and I am not going to permit it. This witness will testify, as I understand

10127 it, that he in fact paid certain prices during certain years, which were the lowest market prices for the kind of material they used.

Mr. O'Brien: We do not know that yet, your Honor.

The Master: That is the trend of this witness' testimony, and I am not going to permit experts to be called as to what in their opinion was the cost of material. It is easy to know as a fact what the cost was, the market cost and quotations. I am not going to take expert evidence on things that can be proven as a fact. We might call Farrell's sons or Burns

10128 and find as a fact what coal was being sold for at that time. That is not subject to expert testimony; it is a fact.

Mr. O'Brien: The costs of the company may become a matter of estimate, your Honor.

The Master: That may be.

Mr. O'Brien: If the original costs are not available.

The Master: But we do not need that from this witness. You need not answer the inquiry.

Mr. O'Brien: If he is going to be qualified as an expert I want to examine him. 10129

The Master: I decline to permit him——

Mr. O'Brien: If he is going to be asked any questions in the form of or in the substance of questions asked of an expert, I will have to go into it.

The Master: If that situation arises I will probably give you a chance to ask questions on cross-examination. Let us go ahead with the direct.

Q. What did you do from time to time in your office with respect to keeping track of prices and market conditions? 19130

A. I read all the trade papers, keep posted of all the daily, weekly and monthly prices as published in the technical papers. I belong to certain organizations, the purchasing agent belongs to certain organizations, where we get a general knowledge of supplies. We follow the market of supplies as much in detail as is possible.

Q. What about trade catalogues of dealers in these supplies?

Mr. O'Brien: I move to strike out the latter part of the witness' answer, such as characterizes his own testimony and places a value upon his own efforts. 10131

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. What about trade catalogues of dealers in supplies in this field?

A. We are posted on those; we have catalogues practically of everybody.

By Mr. O'Brien:

Q. And you use them?

A. Daily.

10132 By Mr. Ransom:

Q. And have them?

A. Have them, yes.

Q. What about conferences with salesmen and representatives of various sellers of these materials?

A. We see a number of them daily.

Q. And by telephone contact?

A. And personal calls.

Q. And do you keep in your files the information which comes to you from these various sources?

A. We do.

Q. You started, when you were interrupted by
10133 counsel for defendant, to say something about your having an elaborate system of something. What was it?

Mr. O'Brien: Was he interrupted by counsel for defendants?

The Master: I don't know whether he was or not.

Q. Finish your answer in that respect.

A. An elaborate system of detail prices the past number of years.

Q. And you make use of that data from time to time?

A. We do.

10134 Q. Have you for a number of years conducted the negotiations and negotiated the agreements on behalf of the company for the purchase of coal?

A. I have.

Q. That is, subject to the approval of the Executive Committee?

A. That is correct.

Q. Have you also purchased the coal for the Astoria Light, Heat & Power Company?

A. Yes.

Q. What, if any, has been your relation to any

purchase of coal for other gas companies affiliated with the Consolidated Gas Company? 10135

A. We purchase coal for the other companies affiliated with us, except the New York Mutual.

Q. Do those companies make their own contracts, or are they made as one contract?

A. We make one contract to supply the coal to them from the company.

The Master: Does that include other companies besides the Astoria?

The Witness: The Standard and the New Amsterdam——

Q. You obtain information as to the coal requirements of each of the companies, or all of the companies? 10136

A. Yes.

Q. And then place one order or series of orders?

A. It makes up so many hundreds of thousands of tons covering the whole situation.

Q. That is, you place orders covering the total?

A. We do.

Q. Is it deemed that there is any advantage in so doing? If so, what?

A. There is very much of an advantage in buying in quantity.

By Mr. O'Brien: 10137

Q. Mr. Gawtry, will you give all the companies, while you are on that subject, which you buy coal for?

A. The Consolidated Gas Company, the Astoria Light, Heat & Power Company, the New Amsterdam Gas Company, the Standard Gas Light Company, New York & Queens Gas Company, Central Union Gas Company.

By Mr. Ransom:

Q. That does not include the Mutual?

A. It does not include the Mutual.

10138 By Mr. O'Brien:

Q. How about the Edison and the United Electric?

The Master: We are talking about gas companies.

The Witness: They buy their own.

By Mr. Ransom:

Q. And the Mutual buys it own?

A. The Mutual buys its own.

The Master: Why is that?

The Witness: We have not control. We do not own as much of the Mutual stock as we have in the other companies. They always
10139 have made their own contracts.

By Mr. O'Brien:

Q. Is it a minority interest that you have there?

Mr. Ransom: I object to the question.

The Master: You need not answer that.

Mr. O'Brien: It saves time.

The Master: I will show you how it does not. He has said that they do not own the control of the Mutual, and now you go back and ask if it is a minority.

Mr. O'Brien: It was not a definite answer.

The Master: Well, it was definite enough.

10140 Mr. O'Brien: I will get it later.

The Master: I don't believe you will, other than what is already in.

By Mr. Ransom:

Q. What kinds of coal are used in connection with the gas business?

A. So-called broken coal, anthracite gas coal, which is used in the Astoria Company, Central Union Gas Company, to manufacture coal gas.

By the Master:

Q. Let me ask you, you first talk of broken coal,

broken sizes, and then you talk of gas coal. Is that two different kinds of coal? 10141

A. Yes, gas coal is bituminous coal.

Q. Gas is made out of bituminous coal?

A. Yes, certain kinds of gas.

Q. I mean coal gas is made out of bituminous coal?

A. That is right.

By Mr. Ransom:

Q. Anthracite coal is what they call generator coal?

A. Yes, generator coal.

By the Master:

Q. You use that in your furnaces and boilers? 10142

A. We use that for gas making purposes in our water gas plant at certain stations.

Q. But you don't extract gas from anthracite coal?

A. Yes, we use the carbon in anthracite coal, that is part of the process of manufacture.

By Mr. Ransom:

Q. Broken coal is large chunks, large sizes of anthracite?

A. The largest size of anthracite made.

By the Master:

Q. They are these big chunks of coal? 10143

A. Yes.

Q. I got the impression when you said broken sizes that it was this small coal.

A. No, that is buckwheat coal.

Q. The coal you are talking about as broken coal is broken into large chunks?

A. As large as they come.

Q. Probably a pound or more?

A. Yes.

10144 By Mr. Ransom:

Q. That is a size of coal that is made especially for gas making purposes?

A. It is.

Q. And all, or practically all, of the broken coal that comes into New York City is for gas company use?

A. All that I know of.

Q. Is broken coal cheaper or more high priced than what we may call the usual or standard grades of anthracite?

Mr. Chambers: I object to comparing. Let
10145 him state what the prices of the respective coals are.

The Master: I will let him answer these questions.

A. It is cheaper than the next size, cheaper than egg, cheaper than stove, cheaper than chestnut.

By the Master:

Q. Do I understand that in mining the coal they mine it in large chunks?

A. Yes, and then break them up. They send them over screens, the sizes getting smaller and smaller.

Q. So it is the difference in the added cost of labor
10146 and sorting and breaking up the coal?

A. Yes.

By Mr. Ransom:

Q. Now, take anthracite coal first. What has been the practice of your department, and of yourself as to the time of the year when purchases and contracts are made?

A. It is the practice in the coal industry to make contracts from April to April of each year.

By Mr. O'Brien:

Q. Did you say the practice of the coal industry?

A. I did. 10147

Q. Or the practice of your company?

A. The practice of the coal industry in general, for a great many years past.

By Mr. Ransom:

Q. And that is a practice by which your company has been to some extent affected?

A. Yes, sir.

Q. In 1917 did you make contracts for the purchase of coal during the ensuing year ending March 31, 1918?

A. Yes.

Q. That was in April, 1917? 10148

A. Yes, April, 1917, or just prior thereto; it may have been in March.

Q. The contract is considered as an April to April contract?

A. April to April contract.

Q. What about the coal purchases for the year beginning April 1, 1917? How were those negotiated and agreed upon?

A. There were practically no contracts made during 1918, because the United States Fuel Administration, a department of the Government, had charge of the coal industry. They sent coal to us, 10149 awarded coal, fixed the prices, they distributed it, they looked at our stocks, and told us we should get coal here and there and wherever they said. They had full control of the industry at that time.

Mr. Chambers: He asked the witness about 1917.

Q. As to the year beginning April 1, 1917, you did have contracts?

A. We had some.

10150 Q. Some contracts?

A. That was during the war times, and very few people would make hard and fast contracts.

The Master: But the war was not declared until April 6, 1917. You made your contracts before that?

Mr. O'Brien: The witness has already stated they had their contracts for 1917 to 1918, covering the whole year.

The Master: That is what I am trying to get clear. I understood him to say that, and then he said they had some contracts.

10151 The Witness: Some people would merely promise to deliver as much coal as they could, the railroad conditions were such that they were uncertain, they would not make hard and fast promises.

Mr. O'Brien: Are you talking about April, 1917, now?

The Witness: Yes.

The Master: So that for the year beginning April 1, 1917, you were not able to contract in full for your requirements, make firm contracts?

10152 The Witness: No.

Q. What about 1918, beginning April, 1918, were you able to make any contracts as of that date for the ensuing year?

A. No. We went to the people from whom we were purchasing coal, and they said they would give us as much as they could during the year, they would make no promises, subject to the regulations of the United States Fuel Administration.

Q. Well now, did you in your ordinary course

make agreements for the purchase of coal with jobbers or dealers or with coal companies? 10153

A. With coal companies direct.

The Master: Producers, you mean?

The Witness: Producers.

Q. That is, you stand in the same position as wholesalers?

A. We do.

Q. And make your arrangements directly with the producing companies?

A. That is true; with one or two exceptions during the year we were forced to purchase coal wherever we could, and where we purchased from jobbers we had to pay the commission allowed by the United States Fuel Administration. 10154

Q. When your contract expired on April 1, 1918, such contracts as you had made as of April 1, 1917, what were the circumstances affecting their renewal or the making of other coal contracts?

A. We could not make other coal contracts; they would merely promise to deliver as much as possible.

The Master: Producers.

The Witness: Producers; under the restrictions of the United States Fuel Administration. 10155

Q. And were you in fact able to get all the coal that you required from producers at all, during the ensuing twelve months?

A. We secured coal enough to keep going. We were hard put to it a great many times, we were continually at Washington or had our representative before the United States Fuel Administration at Washington, we were begging and gathering every ton we could from every source.

Mr. Chambers: So was every one.

10156 Q. Did you buy some coal in 1918 from other than producers of coal?

A. We did.

Q. In 1918, will you just state what were the coal prices which you paid, and the elements which enter into those prices, where delivery was made and the like?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial, that the contract should be produced. These arrangements were reduced to writing, and we ought to have the contracts here.

10157 The Master: He said from April 1st, 1918.

Mr. O'Brien: They were presumably terminated in contracts.

The Witness: The witness has testified that for the period beginning April 1, they had no contracts.

Mr. O'Brien: Well, I think we might have that clear on the record.

The Master: It is clear, isn't it, Mr. Gawtry?

Mr. O'Brien: He said they bought it wherever they could get it, but he——

The Master: Beginning April 1st you had no contract for the balance of the year 1918?

10158 The Witness: We had certain agreements, certain promises, so far as possible.

The Master: Oral or written?

The Witness: Chiefly oral.

The Master: For the first three months, however, you did have contracts overlapping from the year before?

The Witness: From the year before.

The Master: I will let the witness say what the prices paid were after the first of April,

and I shall rule that for the period prior to April 1st the contracts ought to be produced. 10159

Mr. O'Brien: Will your Honor require the production of contracts wherever they were made, for any period?

The Master: I am going to require the production of contracts for the last five years.

Mr. Ransom: We have got many of those contracts here.

Q. During 1918, was there one contract which had been made some years before but which had not yet expired?

A. Not on anthracite coal. 10160

Q. Not on anthracite, on bituminous.

Mr. Chambers: May I add, if they are made up of letters, your Honor will require him to produce those?

The Master: I will require them to produce the written contracts covering the purchase of coal for the last five years.

Mr. O'Brien: Because we want to go into that very thoroughly, your Honor. Where they go from the producers to small retailers in the City, we want to find out why.

Mr. Chambers: I mean the writings may not form legal contracts. 10161

The Master: Then I don't want them, if they don't form a legal contract. I don't want them.

Q. In 1918, were there any prices fixed for anthracite and bituminous coal by the United States Fuel Administration?

A. There were.

Q. Were there in 1917?

A. There were.

Q. As of what date?

10162 A. As of December 1, 1917.

Q. And railroad and similar charges were likewise fixed by Federal authority?

A. The United States Railway Administration.

Q. What was the price thus fixed as of December 1, 1917?

A. On broken coal?

Q. On broken coal.

A. $4.90 at the mines.

Q. That is per gross ton?

A. Gross ton.

Q. Well, now, can you say what further elements
10163 entered into it to make up the alongside price?

A. The railroad freight, water freight, the tax, government taxes, three per cent. on the rail and water freight, and the insurance.

The Master: That is alongside of the dock?

The Witness: To bring it alongside of our docks, yes.

Q. So that the price at that time was fixed as per gross ton at the mine?

A. Gross ton at the mine, yes.

The Master: What was the total landed at your dock?

10164 A. As of December 1, 1917.

Mr. Chambers: This is fixed by the government?

The Master: The Fuel Administration.

The Witness: $6.62.

The Master: A gross ton.

The Witness: A gross ton.

Q. That is as of December 1, 1917, the alongside price per gross ton was $6.62?

A. December 1, 1918, not 1917.

Q. What was the price as of December 1, 1917? 10165

The Master: 1918, he says.

Mr. Chambers: Instead of 1917.

The Witness: 1918.

The Master: Well, did that vary during the year?

The Witness: It varied very much during the year.

The Master: Well, give us the variation.

Q. Will you start from December 1, 1917, and give the variation?

A. I haven't got that with me here. For 1918, I can give you. 10166

Q. Give me for 1918?

Mr. O'Brien: Give us the cost at the mine, as you go along.

Mr. Ransom: Yes.

The Master: Have you got that cost at mines during the year, the variation?

Mr. Chambers: I object to the testimony before April 1, 1917, because they had a contract. Why are we interested in that?

The Master: I am going to take this testimony, and I will require the contracts to be furnished to supplement it.

Mr. O'Brien: As I understand, the witness 10167 is only giving us now the government dictum on the price.

The Master: That is what we are getting now, the variations in the Fuel Administration figures.

Mr. Ransom: And what you paid?

The Witness: That is what we have to pay, that is what every one paid.

The Master: Don't let us have too many talking at once. If Mr. O'Brien will take his

10168 seat, I will try to straighten this out. The first thing I want to know, Mr. Gawtry, is whether the figures that you are now giving us are the figures that you actually paid for coal?

The Witness: They are.

The Master: All right. Now, are those the figures that you actually paid on unexpired contracts?

The Witness: No; on coal that we purchased, because we had no contracts at that time.

10169 The Master: I thought there was an unexpired contract.

The Witness: Mostly promises, promises to deliver.

The Master: There was no enforcible unexpired contract January 1, 1918?

The Witness: The government upset everything; they increased prices, increased railroad freights.

The Master: What I am trying to get at, you had some contracts made prior to 1917, didn't you?

The Witness: Yes.

10170 The Master: Did the government interfere with these contracts?

The Witness: It did.

The Master: Refused to permit delivery at the prices agreed on?

The Witness: Changed delivery, sent some coal to us, cancelled other contracts, modified others.

Mr. O'Brien: Did they cancel the bituminous contract?

The Witness: No.

The Master: The prices that you are giving me now are for the anthracite coal? 10171

The Witness: Anthracite coal, yes.

The Master: That is what you actually paid during the year?

The Witness: Yes.

Q. Give us the variance in the price at the mine and the variance in the additional elements that make up the alongside price.

A. Broken coal, anthracite, price made by United States government——

The Master: I don't want that price made by the United States government. 10172

The Witness: The price we paid?

The Master: That is what I want.

The Witness: As made by the United States government, gross ton at the mines, $4.90.

The Master: When?

The Witness: January 1, 1918. Railroad freight $1.40; the railroad freight was increased April 9th by fifteen cents; the railroad freight was increased by the government on June 25th, thirty cents; water freight was increased from about twenty-five cents to forty cents or fifty cents, depending on which station it was delivered to, certain stations beyond 10173 towing limits of delivery.

Q. About what date was this freight increased?

A. That was at different times during the year, November 1, 1918, was an increase of $1.05 at the mines, making $5.95 instead of $4.90, by the United States Fuel Administration.

By the Master:

Q. Was that completed for the year?

A. Yes, sir.

10174 Q. Now, the average price for the year at the mine was how much?

A. About $7.

Q. At the mine?

A. No, the average price at the mine for the year was $4.90 up to November, and then it was $5.95.

Q. Have you got an average for the year?

A. Eleven months at $4.90 and one month at $4.95.

Q. How about the average price for the year landed alongside of dock?

10175 A. $7.27.

Q. That is for the whole year, you have calculated the variances during the year?

A. Yes.

Q. That is $7.27?

A. Yes, sir.

Q. Do you remember offhand what it averaged in 1917?

A. Not offhand.

Q. Have you any data with you?

A. Not to be sure.

Q. Or for prior years?

A. No.

10176 Q. I am going to ask you to prepare yourself for that information, so that I can have it.

By Mr. Ransom:

Q. From and after October and November, what became the alongside price for 1918?

A. $5.95.

Q. The alongside price with the different elements in?

A. I would have to make that calculation.

The Master: Well, you have given us enough on that. We won't spend time on that.

Mr. Hayward: Speaking about all these different elements he has not given us the water haul price and the insurance? 10177

The Master: He did.

Mr. Hayward: No, he didn't, he said the water was increased, but he did not tell us what the initial price was.

The Master: What was the initial price?

The Witness: Starting at twenty to twenty-five cents, varying from station to station within towing limits or outside of towing limits.

Q. Which of your plants is within towing limits, or which of the plants of the Consolidated system? 10178

A. 21st Street.

Q. That is, 21st Street is within?

A. Yes; 14th Street, 42nd Street——

Q. 42nd Street is within and 14th Street is within?

A. Yes.

Q. How about 99th Street?

A. Without.

Q. And Astoria?

A. Outside of towing limits.

Q. Well, what was the variance?

Mr. O'Brien: Won't you state what you mean by towing limits so that we will understand it? 10179

The Witness: The price within the towing limits is the price which the towing people charged south of 91st Street and East River and south of 96th Street and North River, anything beyond that they charge extra for. If you live on Manhattan Island, they call 91st Street one side and 96th Street on the other side Manhattan.

10180 Q. What was the price within towing limits at the beginning of 1918?

A. Twenty to twenty-five cents.

Q. Within towing limits?

A. Yes.

Q. What was it outside of towing limits?

A. It varied wherever you took it, five cents over to Astoria, five cents more to Central Union; if you took it up to Yonkers or Newburg, it all depends.

Q. What about 99th Street?

A. 99th Street, five cents.

10181 The Master: How about insurance, what was the rate?

The Witness: About a cent and a half a ton.

The Master: Right through the year?

The Witness: Yes.

The Master: That did not vary?

The Witness: It varies very little, a fraction of a cent. 1.437.

Q. What has been your total alongside price? What was your total alongside price at the end of 1918?

A. $8.38. I beg your pardon?

10182 Q. What is that?

A. I will change that. $8.37 plus.

Q. That became effective as of what time in 1918?

A. November 1st.

The Master: What is it now?

The Witness: It is about the same, there has been no change in it.

The Master: Are you under contract for deliveries this year?

The Witness: For deliveries in 1919?

The Master: Yes. 10183

The Witness: Yes.

The Master: At what price?

The Witness: Same price as the government price fixed.

The Master: $5.95 a ton?

The Witness: $5.95 a ton.

The Master: Railroad transportation and boat transportation is about the same?

The Witness: Boat transportation is the same and railroad transportation is the same, plus the three per cent. war tax.

The Master: I understand that. The war tax is the same, too? 10184

The Witness: Yes.

Q. Is the government price still in effect as to anthracite or not?

A. Yes.

Q. I mean by regulation?

A. Not by regulation, but by the selling at government price.

Q. When did the government limitation on price expire or cease to be effective?

A. The first part of 1919.

Q. But the price has continued even though the limitation was removed? 10185

A. In anthracite, yes, so far as we are concerned. I won't say that anthracite has not been sold higher, because it has been.

The Master: He is talking about you.

The Master: We are talking about you.

Q. Now, with respect to bituminous, what was the price at the beginning of 1918?

A. The price at the beginning of 1918 was $2.70 per ton net at the mines.

10186 The Master: They sell by the net ton instead of the gross ton?

The Witness: Net price per ton at the mine, yes.

Q. Does New England buy on the net ton or the gross ton basis?

A. We buy on the net ton.

Q. But the prices made at the mine are made on a net basis?

A. Yes.

Q. This figure of $2.70, as of January 1, 1918, was for the net ton at the mine?

10187 A. Yes.

Q. When was that fixed?

A. October 27, 1918.

Q. By governmental action?

A. Yes, by governmental action.

Q. And became the price which you paid?

A. Yes, sir.

Q. Can you give the other elements which in the case of bituminous went to make up your alongside price as of that time?

A. The railroad freight was $1.90. The railroad freight was increased on June 25th fifty cents, mak-

10188 ing it $2.40. Water freight was increased in the year from 25 to 45 and 50 cents.

Mr. O'Brien: Won't you state the dates you have, Mr. Gawtry?

The Witness: Railroad freight was increased June 25th fifty cents; water freight was increased at different times during the year up to 45 and 50 cents. The war tax amounted to 8 and 7/10 cents on freight.

Q. What was as of January 1st, or the beginning of 1918, your alongside price on bituminous?

A. It was an average of $5.367. 10189

Q. At that time?

A. Yes, sir.

By the Master:

Q. What did it range during the year?

A. In April it was the same. In July it was $5.86. In October it was the same.

Q. That ran to the end of the year?

A. Yes, plus the taxes.

Q. What is it this year?

A. This year it is nearer $4 at the mines. There is lots of coal sold at the mines at $4.

Q. What are you paying for it? 10190

A. We are paying $2.70.

Q. You are paying $2.70?

A. We are paying $2.60, rather, because on October 7, 1918, there was a reduction of 10 cents per ton. So the $2.70 was reduced to $2.60.

Q. On bituminous?

A. On bituminous.

Q. That is what you are still paying?

A. Paying $2.60, yes.

By Mr. Ransom:

Q. That is under existing contracts?

A. Under existing contracts. 10191

Q. Is the government limitation in price still in effect as to bituminous?

A. It is not.

Q. When was it taken off?

A. Early in this year, 1919.

Q. Since that time has the bituminous price risen or fallen?

A. It has risen to a very large extent on the better grades of coal.

10192 Q. Have you made any recent purchases of bituminous?

A. We have.

Q. At what price?

A. $3.12½ cents per net ton at the mines.

Q. That would make what alongside at New York?

A. $6.50.

Q. How recently was that made?

A. September 15th. We are short of coal.

The Master: Of bituminous?

The Witness: Of bituminous. We are short

10193 of all kinds of coal. Coal is coming in very badly.

Q. In the case of bituminous, had this company made in 1915 any term contracts for coal, and if so, with what companies?

A. In 1915 we made contracts with the Pittsburgh Coal Company for a period of five years; with the Consolidation Coal Company for a period of three years; with the Westmoreland Coal Company and Penn Gas Coal Company for a period of three years each.

Q. Those related to bituminous only?

A. Bituminous only.

10194 Q. You said you made in 1915 three contracts. You referred to the Pittsburgh Coal Company contract for five years; what were the other two?

A. The Consolidation Coal Company, the Westmoreland Coal Company, the Penn Gas Coal Company—four.

Q. Four contracts? What was the term of the Consolidation Coal contract?

The Master: He has given us that; five years for one and three for the other three. Is that right?

The Witness: Yes. 10195

Q. Of those other contracts are there any of them that have been in force since April, 1915?

A. Pittsburgh Coal Company only.

Q. That expires when?

A. March 31, 1920.

By the Master:

Q. That is that soft coal company?

A. Yes, sir.

Mr. Ransom: These are all soft coal contracts?

The Witness: Yes.

Q. These are all soft coal contracts? 10196

A. Yes.

Q. These four?

A. Yes.

Q. Have you never had any hard coal contracts?

A. I have never seen any anthracite contracts go over twelve months.

Q. But you did have some annual contracts, did you?

A. Yes.

The Master: The hard coal people only made annual requirement contracts; the soft coal people made them for three years.

Q. What unexpired contracts did you have for 10197 anthracite coal that you recall at the beginning of January, 1918?

A. We had the Lehigh, Wilkes-Barre Coal Company, Williams & Peters, at the date of January 1st.

Q. Yes, beginning at 1918, what unexpired contracts?

A. The Lehigh, Wilkes-Barre Coal Company, Williams & Peters, Philadelphia & Reading Coal &

10198 Iron Company, Thorne, Neale & Company, Meeker Company, Lehigh Valley Coal Sales Company.

Q. How about the Pennsylvania Coal Company?

A. The Pennsylvania Coal Company is the Erie Railroad. That is handled by Williams & Peters.

Q. It is through Williams and Peters?

A. They are the sole agents for the Erie.

Q. On the expiration of these contracts on April 1, 1918, were you able to procure a renewal of any of them?

A. April 1, 1918?

Q. Yes.

10199 A. We were not.

The Master: Did I not understand you to say these contracts were subject to termination by war conditions, and that they were practically out of the way by reason of war conditions?

The Witness: They were all cut to pieces.

Q. So far as price is concerned?

A. So far as price and their promises——

The Master: They did not survive the war conditions at all?

The Witness: Practically not, because the United States Fuel Administration came in

10200 and said, "We cut your tonnage from 40,000 to 20,000. That was the same at Philadelphia and New York.

The Master: Likewise the prices were rejected that had heretofore been charged?

The Witness: The prices were changed. They were made subject to freight rates.

The Master: War conditions?

The Witness: Subject to conditions of labor.

The Master: And war conditions?

The Witness: Yes, up or down.

Q. During 1918 you stated your coal needs to various companies, and they agreed to do their best? 10201

A. They agreed to do their best.

Q. From what companies did you get coal during 1918, subject to this control of the Fuel Administrator? If you can, give the quantities which were indicated to the respective companies.

A. We received coal from the Lehigh & Wilkes-Barre Coal Company. We were promised no definite amount. Williams & Peters—those same names that I read during the last answer.

The Master: You got coal during 1918? 10202

The Witness: Yes.

The Master: Judge Ransom wanted to know if you could give the amounts and quantities you got.

The Witness: I would have to dig it out from my books; I haven't it off hand.

Mr. O'Brien: Haven't you brought the contracts and vouchers?

Mr. Ransom: These are not covered by contracts.

Mr. O'Brien: We want the correspondence. These agreements and promises were not whispered to each other presumably. 10203

The Master: Next question.

Mr. Chambers: I don't see why we can't expedite it by now showing what they had, and how much they paid, without so much preliminary discussion.

The Master: We have got what they paid.

Mr. O'Brien: I call your attention to the fact that most of Judge Ransom's questions along here, are what were the prices. There

10204 is no statement from the witness what they paid.

The Master: Yes there is.

Mr. Chambers: We haven't what they paid for a certain quantity.

The Master: I beg your pardon.

Mr. Chambers: We have the various prices, but we don't know which quantities affected those prices.

The Master: I don't see that it makes any difference.

By Mr. Ransom:

10205 Q. Have you present with you in court the contracts or correspondence in relation to those four bituminous coal companies?

A. I have.

Q. That is, the Pittsburg, which is yet unexpired, and the three which did expire?

A. I have.

Q. Will you produce them, first the Pittsburg?

(Witness produces papers.)

Q. You have also handed me the Westmoreland, also that of the Penn Gas Coal Company. Is that Williams & Peters?

A. No, that is bituminous.

10206 Q. And the Consolidation Coal Company? You have handed me four documents with annexed correspondence?

A. That is right.

Q. Now, with respect to anthracite what if any contracts have you now in force?

A. 1919?

Q. Yes.

A. We have the contract with the Lehigh Valley and Wilkesbarre Coal Company, and Williams & Peters.

Q. When were these made? 10207

A. Prior to April 1, 1918.

Q. These are all the contracts with respect to broken or anthracite coal which you have?

A. Yes.

Q. Will you produce them?

Mr. O'Brien: Judge, do you mean the present time by your question?

The Master: Contracts now in force.

Mr. O'Brien: The question was, "all you have".

The Master: Now in force.

The Witness: That is all I have in force at 10208
the present time.

Q. What is the alongside price under these two contracts at the present time?

A. The Lehigh Valley and Wilkesbarre, $8.37½. That would vary——

Q. According to whether it is within the lighterage limits or not?

A. Yes, at certain stations.

The Master: What is it at the mine?

The Witness: $5.85, the Government price. They are all $5.85 at the mine.

The Master: That is what we want to know. 10209

Q. Now the Peters' contract?

A. The same price, $5.85 at the mine.

The Master: That will figure about how much landed?

The Witness: About $8.35, or $8.37 alongside, average.

Q. Now, Mr. Gawtry, have you made up a statement which has been checked by you, showing the prices paid by the Consolidated Gas Company for

10210 the purchase of materials and supplies for the various years from 1913 to the present time?

A. I have.

Q. Covering the principal materials purchased by the company?

A. I have.

Q. And is the statement which you have thus made up in summary form the statement which I now show you?

A. It is.

Q. This shows in the first column somewhat more than twenty of the principal articles purchased by

10211 the complainant in its gas business?

A. Yes.

Q. Twenty-seven in number?

A. Yes.

Q. In the second column you show the unit of purchase?

A. Yes.

Q. Then with respect to the years 1913, 1914, 1915, 1916, 1917 and 1918, you show the lowest and the highest prices in each of those years actually paid?

A. Actually paid, from vouchers.

10212 Q. You have checked these to the vouchers?

A. I have.

Q. And to your records?

A. I have.

The Master: Personally?

The Witness: Personally.

The Master: That is really what I wanted before, a statement of the prices running over a series of years, not so much the contracts themselves.

Mr. Ransom: I offer this in evidence.

Mr. Chambers: I object to this, first, on the 10213
ground that it is premature; he has not proved the prices for materials bought yet.

The Master: He is proving it now.

Mr. Chambers: No, he is proving comparison of prices.

The Master: No, he is testifying that he in fact, in behalf of his company during the year 1913, bought cast iron pipe, A. G. I. standard, by the net ton, the lowest price actually paid in 1913 was $20.30 and the highest $22.40. Now Judge Ransom is offering this chart as a condensed method of having the witness tes- 10214
tify to all of these figures. Why isn't it proper?

Mr. Hayward: What has that to do with the average?

The Master: It is easy enough to compute averages.

Mr. Hayward: How do you know, unless you know the quantities? He may have bought a little driblet at a low price, and he may have bought large quantities at the high price.

Mr. Chambers: It is premature; he has not laid the foundation for it, and we are entitled to the contracts relating to these various mat- 10215
ters before it is evident. This is secondary and hearsay, and it is entirely out of order at this time, until they prove that they did use gas oil and steel pipe and lead and castings and steel bars and what contracts they had. Then, perhaps, after he gets all through, he might if those contracts are in evidence and he has proved the prices, and that they used quantitites of these materials, then perhaps, to aid the Court, he might get up a tabulation.

10216 It is like all these other offers, he has got the cart before the horse.

Mr. O'Brien: Will your Honor permit me to examine the witness before I make my objection?

The Master: Yes, but not before I do my own asking.

Mr. O'Brien: I don't like this capsule form of testimony.

By the Master:

Q. Is it a fact that during the years 1913 to 1918 inclusive, the Company purchased the various ar-

10217 ticles shown in this schedule?

A. They did.

Q. And used them?

A. And used them.

Q. And is it the fact that they were purchased at gross ton, net ton, gallon, bushel, pound, hundredweight, or pieces or barrels, as indicated in Column 2?

A. Yes, sir.

Q. And is it the fact that the lowest price you paid, either by contract or by individual purchase, in either a large or small quantity, during each year, was the price put in the column "Lowest" in

10218 each year?

A. It is.

Q. Some of it by contract?

A. Some by contract.

Q. And some by open order?

A. That is right.

Q. And some in small quantities?

A. Yes.

Q. And some in large quantities.

A. Yes, some in large quantities.

Q. And is it the fact that during these years the

highest price was paid for these articles actually purchased and used; were the figures put in the column "Highest"? 10219

A. Yes.

Q. In small or large quantities?

A. Yes.

Q. Varying from time to time?

A. Yes.

Q. Is it fair to asume that the higher prices were for smaller quantities in some instances?

A. Not necessarily.

Q. In some instances you would get a shorter price for a smaller quantity? 10220

A. No.

Q. The lower prices are usually because of contract?

A. We might purchase small quantities in the open market.

Q. At a short price?

A. Yes.

Q. That is what I say.

A. I mean by short price——

Q. A low price?

A. That is right.

Q. In other words, you might pick up a small quantity at the lowest price? 10221

A. Yes.

Q. And you might pick up a small quantity at the highest price?

A. Yes.

Q. But the fact remains, as I understand your testimony, that during these various years the lowest price you got on merchandise that you purchased is set forth here under the column "Lowest"?

10222 A. It is.

Q. And the highest price you paid is set forth here under the column "Highest"?

A. That is correct.

Mr. Chambers: That is not true as to wrought iron. He has no price for wrought iron and no price for steel pipe, and no price for iron fittings.

Mr. Ransom: May I just ask him a question?

By Mr. Ransom:

Q. Certain of these items are shown as list less certain percentages. Has the same list price been
10223 in effect during that time with variations in percentages?

A. The list has been the same ever since I have known anything about it, for twenty-five years.

The Master: But you did not give us the list prices.

The Witness: They would vary. We use half inch, three quarter inch, one and a quarter inch, fifty sizes.

Mr. Ransom: The list of prices is here, and as to these items I shall offer the list. I have not put the full list in there because it covers various sizes.

10224 The Master: In other words, supplementary to this statement we now have you shall offer another statement showing these list prices?

Mr. Ransom: Yes. This shows the range of prices, because it shows the different percentages of discount.

The Master: I think you had better produce that list, because I think it is part of this offer.

Mr. O'Brien: Your Honor, I am getting a little impatient about this.

The Master: Yes, you are usually impatient. 10225

Mr. Ransom: I produce the list of standard wrought iron and steel pipes——

The Master: And offer it?

Mr. Ransom: Yes.

By the Master:

Q. Now, on this chart on which I have been interrogating you, Mr. Gawtry, I see as to wrought iron pipe, steel pipe, and malleable iron fittings, the statement, "List less certain discounts." Is the paper I now show you the list prices to which that refers?

A. That is the list prices for three quarter inch 10226
to three inch.

Q. Isn't that complete?

A. It is not complete.

Q. So that the paper I now show you, taken in conjunction with the first paper about which I asked you, will not yet give us the full list prices of these various sizes of steel pipe?

A. Not all of them.

By Mr. Ransom:

Q. But it does as to the ones indicated there?

A. Yes, as to those indicated.

By the Master:

10227

Q. The highest on this chart for wrought iron pipes was three-quarter inch. Does that supplementary list cover that?

A. That was the smallest size we happened to purchase during that year.

Q. Does that supplementary schedule cover up to three inch steel pipe?

A. Yes.

Q. And one and a half inch wrought iron pipe?

A. Yes.

10228 Q. Now, as to iron fittings per pound, is that supplementary statement complete?

A. It is.

The Master: Now as I understand it, Judge Ransom's offer now is of the chart headed "Comparison of prices for materials bought by the Consolidated Gas Company for 1913 to 1918 inclusive", and supplementary to it and as part of the same offer, the additional small sheet headed, "List prices of standard wrought iron and steel pipe", and further the price of malleable iron fittings. I will hear Mr. Cham-

10229 bers on his objection.

Mr. Chambers: Where does the list come from? Who created it, that is what I don't understand. There is a list of prices. Is that the Government price, or whose price?

The Master: Ask the witness.

The Witness: That list is the list used by every manufacturer of wrought or steel iron pipe.

By Mr. Chambers:

Q. Who is the author of it?

A. I can't tell that, it was probably in use before

10230 I was born.

The Master: You may not be familiar with that method of doing business, Mr. Chambers, but an industry like this has a standard list price. The variation of the purchase price depends upon the discount off the list that you get, and you find that that varies. In 1913, which is the high year, it is shown at 72.4 which made it the lowest price, down to 64. That is used in many lines of business. I think I understand perfectly here. The list price is set

forth in the supplementary list of standard prices. 10231

The Witness: That can be checked by the catalogue of any manufacturer.

The Master: That is the list price?

The Witness: Yes.

The Master: And the price you actually pay depends on what discount you get off the list?

The Witness: Correct.

Mr. Chambers: I object to both papers as incompetent irrelevant and immaterial, and as premature, and no foundation laid.

The Master: That is what I have been trying to get for a month here, I don't think it is premature. 10232

Mr. Chambers: This is not helpful at this time at all. It does not show the prices for materials, it shows the highest and lowest. It seems to me what ought to be proven first is what they paid for coal, both anthracite and bituminous, and afterwards, if the Court wanted this comparison, why that would be another thing; but to shove in the comparison before he has laid the foundation it seems to me is entirely out of order. 10233

The Master: Mr. O'Brien, I will hear your objection.

Mr. O'Brien: I want to catechise the witness, your Honor.

The Master: No, I will hear your objection.

Mr. O'Brien I desire to ask the witness some questions as a foundation for my objection.

The Master: Your request is denied.

Mr. O'Brien: Are you going to vary from

10234 the practice that we have already established in this case?

The Master: I am varying it in this instance because I do not think it is necessary. Wherever I think it is necessary I will permit it. Just now I think I have developed the basis of those papers, and if you have any objection to them, I will hear it.

Mr. O'Brien: Well, there are matters that have not been brought out by your Honor, I think.

The Master: What point?

10235 Mr. O'Brien: A great many points here.

The Master: Give me one.

Mr. O'Brien: There is no proof before the Court that they bought each of the materials that are mentioned in these columns in the years in question.

The Master: It is apparent from what has already been developed.

Mr. O'Brien: There is proof before the Court as to the conditions under which each item was bought.

The Master: That is conceded on the record. You don't have to ask any questions about

10236 that.

Mr. Ransom: Except coke.

The Master: Except the general testimony of the witness as to how he generally bought his merchandise.

Mr. O'Brien: I don't know what the witness may say in answer to the many questions I want to ask, your Honor. It may be after we ask him certain questions, there may be fifty objections to receiving this tabulation.

The Master: Yes, if that develops later on

I will strike it out. Just now I want the ground of objection stated to receiving it in the light of the testimony now in. 10237

Mr. O'Brien: The testimony given to-day—I am talking about my objection—if your Honor refuses to allow me to catechise the witness, all I can do is to take an exception——

The Master: Correct.

Mr. O'Brien: Now, in reference to my objection to the receipt of this paper, the witness has been upon the stand now for the last hour and forty minutes. 10238

The Master: That is correct.

Mr. O'Brien: He has been asked generally about the *modus operandi* of conducting the business of the purchasing department. He has been asked certain general questions without reference to any particular material purchased, except coal.

The Master: Right.

Mr. O'Brien: As to coal he was asked generally about contracts that were made and prices that were dictated by the Fuel Commission. He has named generally, not including all the people from whom they purchased coal, named some of the companies from whom they purchased coal. A few general questions were asked as to how he kept himself posted as to the market prices of materials generally. As to construction the witness stated he didn't know anything about construction, although there are items of construction in this tabulation. 10239

The Master: What items?

Mr. O'Brien: Checker brick, lumber, Port-

10240 land Cement, red brick, building brick, malleable iron fittings, which may or may not be part of building construction.

The Master: Suppose they used some brick in building or repairing a retort?

Mr. O'Brien: He said that that was under the construction department.

Mr. Ransom: Not the contract.

The Master: No.

Mr. O'Brien: Well, these fine points, one has got to have an eagle eye to understand them. I thought I heard the witness, in his

10241 modulated voice, say——

The Master: Mr. O'Brien, it is not at all unusual for a judge or referee to get a point more clearly than counsel whose mind is sometimes distracted, and who is thinking of something else. It is very much like a game of checkers or chess, you can see moves that the man actually playing does not see. To my mind this testimony is perfectly clear, and came out in perfectly clearcut fashion. This witness is testifying in substance that in his department he purchased during these years the various articles tabulated on this list at

10242 the prices that he now gives. Am I right about that?

The Witness: Yes.

The Master: Every item?

The Witness: Yes, that is so.

Mr. O'Brien: It may be that I did not hear this witness. The last sentence was numbled.

The Master: Do I understand that the articles listed in this paper are all articles that are purchased through your department?

The Witness: They are.

The Master: As distinguished from contracts and purchases made through the other departments to which you referred? 10243

The Witness: That is true.

The Master: That item is clear now. What other item is it?

Mr. O'Brien: It is submitted in connection with my objection——

The Master: I am going to ask one more question, Mr. O'Brien. The two very large items purchased are coal and gas oil, are they not?

The Witness: They are.

The Master: Counsel for the complainant did not ask you how the gas oil was purchased. How is it purchased? 10244

The Witness: That contract is arranged for by one of the other officers.

Mr. O'Brien: The further we go into it the more objections we find to this paper.

The Master: The gas oil is purchased under contract, is it?

The Witness: It is purchased under contract for a year.

The Master: Written contract?

The Witness: Yes. 10245

The Master: Are these contracts in Court, Judge Ransom?

Mr. Ransom: The situation as to gas oil, the requisitions, and so on, as I understand it, pass through this witness' department.

The Master: I asked you a perfectly simple question.

Mr. Ransom: Mr. Addicks is not in Court.

The Master: Are the contracts in Court?

Mr. Ransom: The contracts are not in Court.

10246 They will be when Mr. Addicks testifies to the making of the gas oil contracts.

The Master: All this witness has testified to is what was actually paid during these years for oil?

Mr. Ransom: Yes, he shows what passed through his department on oil. Everything except oil——

Mr. O'Brien: I submit, your Honor, that the testimony of counsel should be rejected. It should not be placed upon this record.

The Master: It is news to me that any counsel in this case is testifying.

10247

Mr. O'Brien: He is just proceeding to state.

The Master: All counsel have been making statements and speeches, but when it comes to them testifying, none of them has testified to anything. The next point.

Mr. O'Brien: If I may be allowed to go through without interruption by counsel for the complainant, I would like to state with some continuity, my objection.

The Master: That is what I want you to do.

Mr. O'Brien: My objection to this paper is based upon the fact that it relates to papers,

10248 records and other documents, written promises, memoranda, that are not in evidence, and that, so far as we know, without my being allowed to ask the witness preliminary questions that my objection may be based upon, papers that are not in evidence. My objection is further based upon the fact that there has been no detail made, no detailed testimony given as to the various items contained on this exhibit so far as the witness has testified. The witness has testified about the first two items of

twenty-seven odd items on this paper. There 10249
has been no proof before the Court that the moneys have been paid out in the amounts specified, that the paper itself is entirely valueless, even though it were admissible, is entirely valueless for the reason that it does not give us the weight of average, and the highest and lowest price does not mean anything.

The Master: May I interrupt you a minute?

Mr. O'Brien: Yes.

The Master: Let us assume this, and I want you to object to these questions, if you think they are improper, and we will test it out. 10250
Just listen carefully to this question.

Mr. O'Brien: Are you going to ask me a question?

The Master: No, I am going to ask a question of the witness, and I want you to object to any question I ask. Mr. Gawtry, during the years 1913 to 1918, did your company buy any linseed oil boiled?

The Witness: Yes.

The Master: And in what quantities did you buy it, gallon, ton, barrel, or pipe?

The Witness: Chiefly by barrel. 10251

The Master: And the price and the charges were made on what basis, by barrel or gallon?

The Witness: So many gallons to the barrel.

The Master: And the price was fixed how?

The Witness: Price per gallon.

The Master: Can you refresh your recollection by anything, and tell us what the lowest price was that you paid for any linseed oil boiled per gallon during the year 1913?

The Witness: From memory?

10252 The Master: No, by refreshing your recollection.

The Witness: If I could see that.

The Master: Could you refresh your recollection?

Mr. O'Brien: Ask him whether he can give it to us, or not?

The Master: I asked him whether he could refresh his recollection and give it to us.

The Witness: Yes, by looking at the original vouchers.

The Master: And can you tell us the highest
10253 price paid in 1913?

The Witness: I could.

The Master: Could you tell us the lowest price you paid in 1914?

The Witness: Yes.

The Master: And the highest price paid in 1914?

The Witness: Yes.

The Master: Same in 1915?

The Witness: Yes.

The Master: Same in 1916?

The Witness: Yes.

10254 The Master: 1917?

The Witness: Yes.

The Master: 1918?

The Witness: Yes; I have already done that.

The Master: You have not objected to a single question, have you?

Mr. O'Brien: I don't know what your Honor has in mind. Do you want me to take up the time of the Court?

The Master: I am just going to demonstrate to you the point that is in my mind. Now, you

did not object to a single question that I asked, did you? 10255

Mr. Chambers: Because you asked them——

Mr. O'Brien: I have not given you as yet all of my objections.

The Master: Will you listen to me a minute?

Mr. O'Brien: Did I object? No, I did not object.

The Master: Why?

Mr. O'Brien: Would I object? I can give you one objection that will apply to all of these questions.

The Master: Wait a minute, will you. You did not object to my asking him whether the company bought and paid for some linseed oil, because that was a proper question, did you? Isn't that so? 10256

Mr. O'Brien: Well, whether it may be, was a simple question that I assumed at the time that you made it was preliminary to some other question of some greater importance. Go ahead.

The Master: I am trying to talk to you, I am not trying to trick you at all, I am trying to talk out the situation with you. 10257

Mr. O'Brien: But you cannot talk out the objection here, your Honor, because it is too fundamental.

The Master: Well, if you won't listen to me, of course I can't discuss it with you, but I am trying to discuss a matter with you to see if I cannot satisfy you that you are in error. I asked the witness a series of questions, one, did they buy some linseed oil, two, did they buy and pay for it by the gallon or ton, or upon

10258 what basis of charge. That is by the gallon. I asked him if he could tell me the lowest price for which it was bought, and he told me, and I asked him if he could tell me the highest price that was paid, and he told me. None of those questions were objectionable, because they were asking a definite question.

Mr. O'Brien: Will your Honor hear me a minute?

The Master: Not until I am through.

Mr. O'Brien: If you started with—we don't care what linseed oil was used, or Omega oil. If you asked him some question——

10259

The Master: If you won't listen to me I will stop the discussion and refuse to hear anything more about it.

Mr. O'Brien: I am trying to give an answer to your query. If you take up gas oil instead of linseed oil, or fuel oil, the vital thing in this case, of course I would object.

Mr. Hayward: I object because there is a possibility that in asking the highest and lowest price it would be identically the same, and if it was the same, of course it would have probative value, if it was the same it would be

10260 of some value as showing the average, but if it varied it would have no probative value. Isn't that true?

The Master: Go on with your objections now.

Mr. O'Brien: If your Honor proceeded to ask him the question about gas oil, of course I would make the objection right away on the ground that we have not got the contracts, on the ground that there is nothing in evidence on which it might be predicated, on the ground

that the witness has not been shown to have 10261
made the contract, and many other objections of that kind. Now, I do not want to proceed to object to some linseed oil here, I think it is too absurd.

The Master: State the broad grounds of your objection, and I will rule.

Mr. O'Brien: In conjunction with the other objections I have made is the objection that the proof so far in this case, except so far as operating ledgers go, and they are absolutely useless, standing alone, without the rest of the system of books, there is no proof in this court 10262
as to the years prior to 1918, and there is no proof that the witness personally conducted this, and all he knows is as head of a big department where this comes in under his general supervision as Vice-President of the company, and when he speaks he says, "We keep ourselves posted", talking with the editorial "we" all the time, and he means his department. And the testimony was leading, he was asked if he was—he was asked to characterize the correctness and reliability of the methods there which they used in preparing and making bids.

There is not any evidence before the Court 10263
as to how they bought these goods, except a general statement, as to which I objected, that they in some instances—he did not include every item, but in some instances they bought by competitive bidding, and that was not explained, your Honor. They have not told us to what extent they did. They may be favored by the companies that they do business with. There has not been any statement as to what deductions from bills or what rebates were

10264 made. In other words, all that matter that we ought to have in the usual form is now being put in here under the effort of the counsel for the complainant, in this concentrated and condensed form, without giving us the foundations on which it might properly rest.

In regard to discounts, we have not that here, or the list prices, the values standing alone, a tabulation of such list prices standing alone.

In the matter of lumber and in the matter of the various building material, the same ob-

10265 jections lie all the more strongly, because the figures here, for aught we know, may be misleading. The highest and the lowest does not mean anything. If we were to have any paper of this kind, or if any paper of this kind were at all proper or admissible, your Honor, it would give us the weighted average price for the year 1918. As to the other years, they are not in this case.

The testimony up to date, so far as the years previous to 1918 are concerned, is solely embraced in the operating ledgers. That is all that is in this case, and the testimony to-day

10266 of the witness that he has kept posted of the prices running back some years.

In regard to the vital things here, the question of coal and gas oil, we have enough to throw this paper out. The gas oil is really the big thing here and almost crucial, together with the question that we touched upon yesterday. They are two big questions in this case. How they bought this oil, when they made their contracts, who negotiated them, whether the officers of this company control the Stand-

ard Oil, whether there is a secret rebate, 10267
whether there is any secret understanding between the companies, and all those matters; whether the contracts were provident and were made at a time when they could make them, foreseeing conditions as they were to be, and what the future would be; how those prices compared with other prices—those are all matters that should be gone into in a table of this kind.

This form of capsule testimony, your Honor, I object to. I think it is a dangerous policy to pursue, because when you couple the 10268
receipt of this paper with the receipt of a paper yesterday over our many objections, subject to some one for the complainant coming in and supplementing and dovetailing the proof, with the receipt of the books in evidence, to which we strongly object, we are just going along and leading to a conclusion that is absolutely unwarranted for the reason that the proper foundations will not have been laid by admissible testimony.

That embraces my objection, and I urge—saying this with a view of having the trial proceed with some expedition and some proof of 10269
testimony of probative force—that if a tabulation summing up the testimony of the witness goes in later and taking nothing except what the witness has testified to, it may become a very useful thing for your Honor and all concerned in the matter of preparing findings, but without that examination of the witness which I have asked and without the testimony of the man who has made the gas oil contracts and the knowledge as to how they were made,

10270 and as to these prices, without the weighted average I have spoken about, and the other things, these papers surely should not be admitted, and I object to them.

Mr. Hayward: I object because it is incompetent, irrelevant and immaterial generally; because no proper foundation has been laid for the introduction of this exhibit; because it does not show on the face of it, nor is there any testimony to show, from what source it was compiled.

I object strenuously and vehemently to the
10271 introduction of this exhibit for the purpose for which the Master said he received it, to wit, to prove average prices, and submit that, except in cases where the high and low prices were identical, it has absolutely no probative value as to average price—conceding that if otherwise admissible, the high and low price being the same, it would not prove the average necessarily.

I call your attention particularly to 1917, gas oil ranging from three cents to five cents, with the quantity, the necessary factor of quantity purchased at one price or the other. The
10272 document has no value whatever as proving average, which the Master said he was going to accept it to prove. For instance, if he bought a thousand gallons at ten cents, and three thousand gallons at five cents, it could not make the average four cents, nor in the absence of knowledge of the number of gallons bought would it have any value at all to show us the average price.

So as to the per thousand of brick ranging, the lowest price, $30. per thousand—no, that

is lumber. Red building brick per thousand $8., the lowest price in 1913, and the highest $8.75. He might have bought 5,000 at $8. and 10,000 at $8.75. 10273

I direct the Master's particular attention to his previous testimony, that for a period of eleven months he got coal at one particular price, and for one month at a considerably higher price, and submit that no average could be determined from simply the high and low prices.

The Master: I think you are right about your statement that I probably cannot fix an average from the information on this paper; but I will take it as evidence of the fact that the lowest price they paid during that year was X dollars or cents and the highest price they paid for any quantity, large or small, was X dollars or cents. 10274

Mr. Hayward: It may have some admissibility but not certainly as to the average.

The Master: I think you are right about the average.

Mr. Hayward: The reason I object so urgently is because the Master himself said it did prove the average. 10275

The Master: I think you are right about that. I think I was in error in saying it proved the average.

Mr. O'Brien: I would like to say——

The Master: I have heard you, Mr. O'Brien. I gave you full leeway, gave you all the time you wanted, I will not hear any more. This paper will be marked in evidence.

Mr. O'Brien: Subject to being connected by evidence of the gas oil proposition?

10276 The Master: I have taken the paper as offered. That will be Exhibit 283, both sheets, the larger sheet and the supplementary sheet will be one exhibit.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

Mr. Hayward: Exception.

Marked Complainant's Exhibit No. 283.

By Mr. Ransom:

Q. I think you said, Mr. Gawtry, that you personally checked the figures given in this last exhibit back to the original vouchers and records?

A. I did.

10277 Q. In a similar way, have you made up a statement showing percentage of increase from 1913 to 1918 as to the range of prices?

A. I did.

Q. And this statement which you have produced is the statement (indicating)?

A. It is.

Q. Which you checked back with the vouchers?

A. I checked back with the original vouchers.

Mr. O'Brien: May I ask the witness a few questions, your Honor?

The Master: On what line?

10278 Mr. O'Brien: The paper is being offered, I assume?

The Master: What do you want to ask him about?

Mr. O'Brien: I want to ask him if he made these up.

The Master: He said they were made and checked by him personally.

Mr. O'Brien: He checked them back. Did you make the percentages; did you compute them yourself?

The Witness: No, I did not do that per- 10279
sonally. The clerks did that.

The Master: Did you check them up to see whether they were correct or not?

The Witness: No, I did not.

The Master: I cannot receive that.

Mr. Ransom: I thought he had.

The Witness: I checked each price, but not the calculation.

The Master: The important feature of this paper is the calculation.

The Witness: I did not make the actual calculation.

10280

Mr. Ransom: The offer is withdrawn at this time.

Q. In the case of the gas oil contracts, Mr. Gawtry, who negotiates the contracts?

A. Mr. Walter R. Addicks, one of the vice-presidents.

Q. The requisitions as to the contracts negotiated come through your department?

A. Yes, the orders for the oil, cargo by cargo.

Q. Can you state the amounts of anthracite coal delivered at the respective stations under these orders in 1918?

A. In the year, January to January? I would 10281
have to pick it out. It would take me some little time to do it. I could do it.

Mr. Ransom: Perhaps I will wait and do that when I put him back to verify those percentages.

The Master: I understand, Mr. Chambers, from what Judge Ransom just said that he intends to recall this witness to prove those percentages on that other paper that he withdrew. Do you want to go ahead with your

10282 cross-examination now or wait until he is recalled?

Mr. Hayward: He is coming back on the stand?

The Master: I so understood it.

Mr. Ransom: Simply as to the percentages.

Mr. Hayward: The Judge said "perhaps".

Mr. O'Brien: They are going to prove through him the deliveries?

Mr. Hayward: If they are going to put him back we would rather wait until he has finished.

10283 Mr. Chambers: If he is not through we will wait until he is finished.

The Master: Will you make a statement, Judge Ransom, as to whether you will or will not recall this witness?

Mr. Ransom: I will not.

Mr. Chambers: You will not?

Mr. Ransom: No, it is not my present expectation.

Mr. Hayward: Then your "perhaps" was negative.

The Master: Judge Ransom has stated that he does not intend to recall this witness, and

10284 you must take that statement. Of course Judge Ransom may change his mind and recall him. But we have got to assume that he will not.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. You have your headquarters, do you, at the 15th Street building?

A. Yes.

Q. And about how many people have you got in your purchasing department, roughly speaking?

A. Twelve.

Q. That includes yourself? 10285

A. No, the assistants.

Q. Thirteen with yourself?

A. Yes.

Q. Are any of those thirteen representatives of these other companies?

A. No.

Q. Those twelve are all the Consolidated employees?

A. They are.

Q. Except they devote some of their time to the purchasing for other companies, as you have indicated? 10286

A. Yes.

Q. I mean your whole department does not devote all of its time to the Consolidated Company?

A. The major part of its time.

The Master: No, the question is, does it devote all of its time?

The Witness: It does not.

Q. Its time is devoted to all these companies?

A. I did not catch that, excuse me.

Q. Its time, regardless of what percentage is attributable to each company, is devoted to all these companies?

A. Right. 10287

Q. You said that you did not purchase for the New York Mutual Gas Light Company because you did not control it, or words to that effect?

A. Practically.

Q. Is it not a fact that your company owns over 55 per cent of the New York Mutual?

A. I don't know that.

Q. What did you mean, that you did not control it; did you mean you did not own the majority of

10288 stock, or what other obstruction was there in the way?

Mr. Ransom: I do not know that the witness said—he said the stock holding was smaller, as I recall.

The Master: No, he said they did not control it, and that is his explanation.

Q. I want to know why you said that you did not control it?

A. We did not own 100 per cent of it or 95 per cent of it.

Q. You do not as to these other companies that

10289 you purchase from. As to the New York and Queens, you only own 76 per cent. What did you have in mind when you said you did not control it?

Mr. Ransom: I object to it as immaterial, from this witness.

The Master: I will allow it.

Mr. Ransom: Exception.

A. We own more than 76 per cent of the New York and Queens Company, sir.

Q. I am away from that question. What did you have in mind when you said you did not control the Mutual?

10290 A. Why, nothing; absolutely nothing.

The Master: Simply that you did not control it?

The Witness: Did not control it. No ulterior motive, I assure you.

Q. Why didn't you purchase for them?

A. They have always done it themselves. I cannot give you any particular reason.

Q. You do not know why?

A. No, I do not. They consult with us. They

have their own purchasing agents as some of the other companies have. 10291

Q. They consult with you?

A. Oh, all the time.

Q. For some reason or other they have held out of the combination?

The Master: Do not answer that question.

Q. This force of yours, consisting of twelve employees, spend their time in regard to purchases of all these companies, you say?

A. They do.

Q. Do these companies bear some of the expense of carrying on your department? 10292

A. They do not.

Q. The Consolidated pays all these employees?

A. All.

Q. How do you get your compensation for acting; your department, how are you compensated for acting as purchasing agent for the other companies, if you know?

Mr. Ransom: I object to the question as immaterial, irrelevant and incompetent.

The Master: The objection is sustained as not proper cross-examination.

Mr. Chambers: Exception. 10293

Q. How much of their time do they devote to these companies—these other companies; do you know the percentage?

A. Yes, I should say ten per cent.

The Master: Let me interrupt you, Mr. Chambers. According to the report of the Consolidated to the Public Service Commission, Mr. Gawtry, the Consolidated owns 54 per cent of the New York Mutual. That would indicate they do control it?

10294 The Witness: I did not know the exact figures.

The Master: So that your statement before, that the reason you do not purchase for the New York Mutual was because you did not control it, was probably not accurate, was it?

The Witness: It was not accurate, no.

Mr. Ransom: 54 per cent of the stock would not necessarily carry the control.

The Master: What is that?

Mr. Ransom: 54 per cent would not necessarily establish much of a control.

10295 The Master: There must be some other reason for the Consolidated not purchasing for the New York Mutual, Mr. Gawtry. Do you know what it is?

The Witness: No, I do not.

By the Master:

Q. You do not know what the reason is?

A. They consult with us all the time.

Q. But you do not know why the Consolidated does not purchase for the New York Mutual as it does for the other companies?

A. We do not purchase for the Standard. If they want certain supplies——

10296 Q. But you buy the coal for them?

A. We buy the coal.

Q. And you do not for the New York Mutual. Why?

A. No, we do not. They have always had their own contracts. Mr. Gallaway was very close to the coal trade; he knew the coal trade in New York.

The Master: I do not know that it is at all material, but I wanted to get the witness' testimony correct, that is all.

By Mr. Chambers: 10297

Q. Take the Astoria Company; they buy a great deal of coal. Do you treat that as the Consolidated Company?

Mr. Ransom: I object to the question in form.

The Master: Objection sustained as to form.

Q. You do not treat the Astoria Company as an outside company when you purchase coal, do you?

Mr. Ransom: I object to the question as to form.

The Master: Same ruling. I am not at all clear, or not entirely clear as to just what you 10298
want to bring out, Mr. Chambers.

Mr. Chambers: Why, he said the employees in his department devoted about ten per cent of their time to the outside companies.

The Master: Yes.

Mr. Chambers: Now I want to show if he includes the Astoria as an outside company, which is a fair question.

The Master: Yes, that is.

Mr. Chambers: That is all I am asking him.

Q. What did you have in mind when you spoke of the ten per cent, the Astoria Company?

The Master: As being an outside company? 10299

Mr. Chambers: As being an outside company.

A. I did not treat it as an outside company when I made that answer.

Q. You treated that as part of the Consolidated and the purchases made of coal for the Astoria Company as purchases made by the Consolidated?

A. Quite right.

The Master: It is easy enough to get the information if you get your question right.

10300 Q. The Astoria Company buys more coal, or more coal is bought for the Astoria than you buy for the Consolidated?

Mr. Ransom: I object to the question as to form.

The Master: I will allow that.

Mr. Ransom: There is no differentiation.

The Master: I will allow that.

A. It buys more bituminous and less anthracite coal.

Q. And bituminous coal, you use more of that than you do anthracite, don't you?

10301 A. We do.

Q. All the companies do?

A. No, not the New Amsterdam; not the Standard; not the New York & Queens; not the Central Union. They use anthracite.

The Master: How about the Consolidated?

The Witness: The Consolidated uses more soft than anthracite.

Q. How much time of yours and others in your department is devoted to buying supplies for the Consolidated as compared with all the other companies including the Astoria Company?

10302 A. We kept no record of it.

Q. You do not know?

A. We kept no record.

Q. And there is no way of telling that, is there, that you know of?

A. Not that I know of.

Q. And you make those charges to the other companies, you said.

A. We do not.

Q. Do you know what the total expenses of your department are, or were for 1918?

A. In salaries?

Q. Well, everything. 10303

Mr. Ransom: I object to the question. That is not proper cross-examination.

A. Not offhand.

Q. Can you state it approximately?

Mr. Ransom: I object to it.

A. I could not guess that.

The Master: He has answered that he could not guess that.

Q. From the time war was declared in 1917, transportation became a serious question, did it not, starting in with about that time?

A. No, sir, transportation became a serious question prior to the time we entered the war. We were shipping all sorts of materials to other companies. Transportation was very much upset. 10304

Q. Well, because of the war in Europe?

A. Because of the war in Europe.

Q. And did it grow worse?

A. Yes.

Q. In 1918?

A. Yes.

Q. That was the culminating point, was it?

A. Yes.

Q. Do you remember if the winter 1917-1918 was an extraordinary winter? 10305

A. Extraordinary.

Q. Because of the severity of the weather?

A. I remember it well.

Q. Outside of the war?

A. Yes.

Q. And that interfered with transportation?

A. Very much.

Q. Interfered with the mining of coal?

A. I cannot say it interfered with the mining of coal; it interfered with the transportation of coal.

10306 Q. Well, it was an extraordinary winter as to the weather, you remember that?

A. Unquestionably, I do.

Q. Do you ever remember when you had such a winter in the gas business?

A. No.

Q. It stood out in all of your experience in the gas business, didn't it?

A. Yes.

Q. As being out of the ordinary?

A. Yes.

Q. I can pronounce it extraordinary, wouldn't
10307 you, as to weather I am speaking?

A. Yes.

Q. Then on top of that you had the war, the United States had entered the war, and the government had taken hold of the coal supply, which made matters worse?

A. Yes.

Mr. Ransom: Is that a question?

Mr. Chambers: Yes, I am asking it.

Q. And oil? They had interfered somewhat with the oil because they needed gasoline?

Mr. Ransom: I object to that question as meaning nothing. He said the government
10308 made matters worse. As a matter of fact the government, I think, bettered conditions.

The Master: I think he will make his record, if you don't interrupt him, Mr. Ransom.

Q. You have said the government interfered so far as to destroy your contract prices for coal, didn't you?

A. Contract prices, yes.

Q. The government stepped in and annulled your prices for coal?

A. Practically.

Q. In some instances you said in 1918? 10309

A. Yes, that is right.

Q. Your company suffered somewhat because of the United States having got in the war?

A. Yes.

The Master: I don't care about that, the company's sufferings, Mr. Chambers.

Mr. Chambers: Well, I want to show that. This is offered for the purpose of asking your Honor finally not to break down this rate because of these extraordinary conditions caused by the war.

The Master: I don't intend to. 10310

Mr. Chambers: And I don't think any authority in the world will give a rate increase for that reason.

The Master: I don't intend to.

Mr. Chambers: I want your Honor to go carefully on that because——

The Master: Yes, I am going to.

Mr. Chambers: Because they base it on 1918, which is not a criterion.

The Master: And I have asked the witness to show the prices prior to 1918, and the witness has testified to prices prior to 1918. I am 10311 not going to, of course, base a report on the unusual conditions existing during the winter of 1917.

Mr. Chambers: Almost everybody suffered; why shouldn't the gas company?

The Master: Or 1918, but this is an important question in this case, with reference to the cost of manufacture, what are the indications and possibilities for the price of coal going down within the next five or ten years?

10312 Mr. Chambers: I know.

The Master: What are the indications of the price of labor going down? What are the indications of the price of oil going down? Those are important things.

Mr. Chambers: Isn't it fair to let me ask him why the prices reached such a high period in 1918? You have allowed that paper in, which shows—you ended there in 1918 with the prices up in the air.

The Master: Certainly; a perfectly simple question. Isn't it a fact that all of the prices of
10313 material went up tremendously beginning in about 1915 or 1916, and culminating in the very high prices in 1918, and some of them even higher to-day, all due to the war conditions more or less?

The Witness: Quite right.

The Master: You can get it into one question.

Mr. Chambers: Well, that is a fact, isn't it, the prices jumped because of the war?

The Witness: Undoubtedly.

Q. And the war is not with us all the while?

The Master: You need not answer that.

10314 Mr. Ransom: No, but prices are, though.

The Master: What are labor conditions to-day, do you know, as to the mining of coal?

The Witness: Labor conditions are——

Mr. Hayward: I object to that, as incompetent, irrelevant and immaterial.

The Master: Objection overruled. Do you know, Mr. Gawtry, what the conditions are with reference to labor at the mines?

The Witness: I do, the labor conditions——

The Master: State those conditions today.

Mr. Hayward: I object to that question. 10315

The Master: The same ruling.

Mr. Hayward: Exception.

The Witness: Labor conditions are very serious.

The Master: In what respect?

The Witness: The men are asking for shorter hours, six days a week—five days a week—they are not turning out a full day's work, they are not working six days now as they should, they are not living up to their agreement, they want more money.

The Master: Is the demand the same as it was? 10316

Mr. Hayward: I object to the question and move to strike out the answer as incompetent, irrelevant and immaterial and hearsay and as having no bearing on this case, conjectural and problematical.

The Master: No, it is not. I am asking him if he knows conditions.

Mr. Hayward: I know what you are asking him.

The Master: Have you studied the conditions?

The Witness: I have. 10317

The Master: Have you been down in the mining districts at all?

The Witness: I have, yes.

Mr. O'Brien: Will your Honor permit me to inject one question here on this very subject?

The Master: One question I will, yes.

Mr. O'Brien: Have you read the report of the committee of the proceedings before the Senate Committee on the inquiry into this very subject?

10318 The Witness: I have part of it.

Mr. O'Brien: What part of it, the first part of it, or any volume?

The Master: You need not answer that. I said one question. You may cross-examine when your time comes, but I wanted to indicate to Mr. Chambers that I am in accord with counsel to bring out the point that you want to argue.

Mr. Chambers: Well, as to the future I don't think any witness ought to be allowed to testify, he ought not to be allowed to guess. My guess
10319 —you don't need an expert to guess what is going to happen.

The Master: I am not calling an expert, I am for actual conditions at the mines.

Mr. Chambers: Well, let him give—my opinion is that prices will come down with a bang.

The Master: My guess is that they will be double within the next two years, and my guess is as good as yours.

Mr. Hayward: You cannot decide this case on your guess or the witness' guess or Mr. Chambers' guess.

10320 The Master: No, and that is why I am asking the witness what are the conditions, the present conditions, not to guess at future conditions.

Mr. Chambers: What is the price of oil now?

Mr. O'Brien: While on that subject, will you ask the witness what the contract price of oil is this year?

The Master: No, I will not. I will let you ask that question on your cross-examination. I am just making clear a situation with Mr.

Chambers. I thought he was asking more 10321
questions than necessary to bring out one point.

Mr. Chambers: All I was trying to show is the past history, that we had an extraordinary winter, and the war was with us.

The Master: There is no question about that, and I knew it, and if you asked the witness that direct question without asking ten questions, he would immediately concede what everybody knows to be a fact.

Mr. Ransom: The company has a right to a fair return under any circumstances.

The Master: I have no doubt the Court can 10322
take judicial notice of the spirit of unrest throughout this country, and throughout the world.

Mr. Chambers: Won't prices be lower?

The Master: I don't know what is going to happen, but I am inclined to say now that I shall take judicial notice of the fact that labor conditions throughout this country, particularly in the mining districts, are such that nobody can tell what the price of coal is going to be, or whether we are going to get any coal.

Mr. Ransom: The United States Supreme 10323
Court said the other day, in the Danver case, that it would take judicial notice of these great increases in operation costs.

The Master: I am not going as far as that, but I am inclined to think the Court will surely take judicial notice of the well known conditions existing in the labor world today, and in our industrial situation. I am quite willing to have you get it on the record, that the price of coal and oil and other materials has jumped

10324 tremendously during the last few years, due to war conditions.

Mr. Chambers: It dropped so fast in the Albany case that they reduced the price of their gas during the trial 15 cents on oil alone.

Mr. O'Brien: And you take the Massachusetts situation, this company has got a price that is away below.

The Master: You can bring that out.

Mr. O'Brien: I am talking about the question you just raised now.

The Master: On what?

10325 Mr. O'Brien: On the question of oil.

The Master: I did not mention oil, I did not speak about oil.

Mr. O'Brien: You spoke about the effect of present industrial conditions on the price of oil.

The Master: I am talking about coal. I don't know what the oil condition is at all. They may strike oil in some new wells in New Jersey next week and drop the price ten cents.

Mr. O'Brien: I mean by this year.

Mr. Chambers: There is an oversupply of oil?

10326 The Master: If they do I will buy an automobile.

Mr. Chambers: There is oil everywhere.

The Master: Next question, Mr. Chambers.

Q. The conditions presented by the winter of 1918, have been somewhat eased down at the present time, haven't they, so far as transportation is concerned?

A. Yes.

Q. And you are able to procure coal now?

A. Not in the quantities we want it, sir.

Q. No, but you have enough, haven't you at the present time? 10327

A. Not enough for our usual stock at this time of the year, no; we are short.

Q. But you not only buy, but you buy coal for the other companies?

A. Yes.

Q. Now, how did you divide it up when there was a scarcity, did you supply the other companies once ahead of the Consolidated?

A. Whoever needed it the most got it.

Q. What is that?

A. Whoever needed it the most got the coal. The gas supply of this city must be continuous, there is no stopping. 10328

Q. Did your department decide which company was——

A. Not my department.

Q. Now, just a minute. Did your department decide which company was in the most difficult condition?

Mr. Ransom: I object to the question as not within the scope of cross-examination.

The Master: I will allow it. You apportioned the coal, did you?

Mr. Chambers: You decided which company was in the most precarious condition? 10329

The Master: You apportioned the coal during the stress of conditions last year, did you?

The Witness: I did.

The Master: On what basis?

The Witness: Whoever needed it the most, whosever stock was lowest.

Q. Who made that decision, did you do that?

A. In consultation with our engineering department, yes.

10330 Q. If the Standard—would you consult with the Standard to see what their condition was?

A. I would know their stocks daily.

Q. And is that so about the other companies?

A. Yes.

Q. You oftentimes, did you, supplied—you supplied the company that you thought was in the greatest need?

A. I did.

Q. Now, transportation is somewhat better than it was?

Mr. Ransom: You mean the conditions or
10331 rates? Conditions have improved, but not rates?

The Master: Nobody asked you, Judge Ransom.

Mr. Ransom: I have a right to suggest that he make his question definite.

The Master: You have no right to say what has improved.

The Witness: Railroad transportation has improved.

Q. And shipping has improved?

A. Yes.

The Master: That is lighterage in the har-
10332 bor?

The Witness: Harbor shipping, that is all we are interested in.

The Master: You do your own lighterage work, I imagine, from the fact you own these scows, don't you?

The Witness: No, scows are for the use of our coke and ashes. We hire our lighterage.

Q. Where does most of your coal come from, what mining region?

A. Pennsylvania.

Q. Speaking of the anthracite? 10333

A. Pennsylvania. all of it.

Q. What part of Pennsylvania, do you know?

A. Up in around Wilkes-Barre and Scranton region.

Q. And your bituminous, where does that come from mostly?

A. It comes from Westmoreland County, Pennsylvania, and Fairmount County, West Virginia.

Q. In 1918, when these conditions you have spoken of, were present——

The Master: Which conditions, Mr. Chambers? Do you mean the weather conditions of 10334
1917-1918?

Mr. Chambers: Yes, everything.

The Master: Well, those weather conditions, my recollection is, ran about to some time in February. They were during January and February and part of December, I think. It got very cold the end of December, I remember. New Year's evening was very cold, 13 below around New York. Now, that eased up the latter part of February; we had the heatless Mondays, as I recall, in February some time.

The Witness: Correct.

The Master: So that the stress of the winter 10335
was over the latter part of February, from the latter part of December to probably the latter part of February, wasn't it?

The Witness: Yes.

The Master: Is that the period you have reference to now?

Mr. Chambers: Yes.

Q. Did you have a quantity of coal on hand?

A. Of course we had coal on hand, yes.

Q. Where was your coal in storage?

10336 A. 21st Street and East River, 99th Street and East River, for the Consolidated, and 14th Street and East River and 42nd Street and North River.

Q. At the beginning, say at the first of December, 1917, did you have enough to last through the winter, stored?

A. No, sir.

Q. How much of a supply did you have on hand at that time?

A. Probably——

Mr. Ransom: I object as not within the scope of cross-examination.

10337 The Master: Perhaps not strictly, but I will allow it.

A. Fifty or sixty days.

Q. That is all of the companies?

A. No.

Q. For the Consolidated or the Astoria—do you mean by that the Astoria?

A. Not mentioning the Astoria.

Q. Where is their coal stored?

A. Astoria, Long Island.

Q. And did they have a winter's supply on hand in December, 1917?

10338 A. They did not.

Q. And when the coal came in during the winter, would you send it direct to these other companies, to their plants, or did you——

The Master: I am going to limit the cross-examination, Mr. Chambers, on that line, because I do not think it is particularly useful, and generally because I am anxious, so far as possible, to limit the cross-examination of this witness so as to finish by one o'clock. I do not want to carry him over until the 30th of Sep-

tember or later, and I am going to limit you when I think you have exhausted or fully covered a point you have made. I do not think this question as to the storage of coal and as to the supply on hand is useful with reference to this witness' direct-examination. 10339

Q. Now, your department in purchasing supplies for all these companies, are the same questions true of the other items set forth in that Exhibit 283, that you have stated to me in regard to coal?

The Master: Do you mean by that, whether they bought for other companies and apportioned it? 10340

Mr. Chambers: Yes, and you are not able to say what portion of time was devoted to this?

The Witness: No.

Q. That is true of all of these items, isn't it?

The Master: I don't think he answered that question. Is it true of all the items?

The Witness: I cannot say what proportion of the items.

The Master: I say is it true of all the items that you purchased for all the companies?

The Witness: We do not actually purchase for all of these companies; we advise them where they could purchase best. 10341

The Master: Let us have Exhibit 283, for a minute.

By the Master:

Q. I understood you to say that you purchased the coal for all the companies?

A. Yes.

Q. Did you purchase the oil for all the companies?

10342 A. I know nothing about oil.

Q. Did you purchase the pipe for all the companies?

A. We purchase for our own company, and advise the other companies where they can get the best prices.

Q. You are getting into a bad habit again. My question was, did you purchase for all the companies?

A. Pipe?

Q. Yes.

A. No.

10343 Q. Three-quarter to 1½ inch wrought iron pipe?

A. No.

Q. Iron oxide?

A. No.

Q. Red lead?

A. No.

Q. White lead?

A. No.

Q. Linseed oil?

A. No.

Q. Gas holder paint?

A. Yes.

Q. Cast iron pipe?

10344 A. Yes.

Q. Cast iron fittings?

A. No.

Q. Iron castings?

A. Yes.

Q. Steel bars?

A. No.

Q. Iron bars?

A. No.

Q. Brass castings?

A. No.

Q. Fire clay shapes? 10345
A. Yes.
Q. Nine inch fire brick?
A. Yes.
Q. Checker brick?
A. Yes.
Q. Lumber?
A. No.
Q. Portland Cement?
A. No.
Q. Red building brick?
A. No.
Q. Malleable iron fittings? 10346
A. No.
Q. Pig lead?
A. No.
Q. Gas meters, five light ordinary?
A. No.
Q. Gas meters, five light prepayment?
A. No.
Q. Where you have said no, you mean that you do not purchase for the other companies?
A. No.
Q. You advise them?
A. Advise them as to where they can buy cheapest. 10347
Q. And where you have said yes, you mean that you cover the requirements of other companies and apportion them the same as with the coal?
A. That is correct.
By Mr. Chambers:
Q. Do you know how you charge—take coal, how you charge these other companies?
A. Yes.
Q. How did you charge them?
A. Charged them cost.

10348 Q. What it cost the Consolidated Company?

A. What it cost the Consildated.

Q. Is it the figure that is stated in the contract?

A. It is.

Q. And what did you do; did you store it—who measures it, who apportions it out?

A. The coal is purchased at railroad weight.

The Master: I think what Mr. Chambers is trying to get at is, did you send part of a cargo to one and part to another?

A. Oh, no, never less than a cargo.

Q. And it is billed to those other companies at
10349 the same price that the Consolidated pays?

A. Yes.

Q. Do they pay the Consolidated, or do they pay the people from whom they purchase?

A. I think they pay direct.

The Master: You are not familiar with the accounting?

The Witness: I do not touch the accounting at all.

Q. Now, take the pipe that you bought, how did you buy that; how did you charge the other companies for that?

A. Cast iron pipe?

10350 Q. Yes.

A. Cost.

Q. Did you charge them the cost?

A. Any supplies we purchased for other companies are charged to them at cost.

Q. Delivered to them directly?

A. Delivered to them directly. We do not bring it in to our warehouse and retransfer it to the other places.

The Master: I take it that the system is, that if the Standard want a thousand feet of

pipe, they put in a requisition to your department, and you order it for them, and order it delivered to the plant? 10351

The Witness: It is purchased by carload lots and delivered to the plant.

The Master: Whatever the quantity is that they order, you put their requisition in for that with direction to deliver directly to the plant?

The Witness: That is right.

The Master: And you don't know whether the bill goes to that plant or comes to you in the first instance, and then is transferred to them? 10352

The Witness: I am not posted on the accounting end of it.

Q. It does not go through a storeroom account?

A. It does not.

Q. You say you don't know anything about the gas oil?

A. I am not posted on that at all.

The Master: Except as to what your company actually pays for?

The Witness: Yes.

The Master: What your company actually pays?

The Witness: From the bills, yes. 10353

Q. Only from the bills?

A. Only from the bills.

Q. You don't pay them; you don't audit those bills?

A. No.

Q. And you do not make the payments?

A. No.

Q. That is some other department?

A. Yes.

Q. All you know as to the price is from examin-

10354 ing some records of payments by the Consolidated Gas Company?

The Master: The vouchers.

Q. The vouchers?

A. The auditor certifies as to the price.

Q. You would not know they paid three cents a gallon in 1913, the lowest price, except as you made an examination of some papers?

A. Vouchers actually paid.

Q. You could not say of your own knowledge that they paid three cents without using these papers?

10355 A. No, I could not.

Q. How about wrought iron pipe; how do you know—is that the same, you have to rely on your lowest price and highest price upon records of papers of the Consolidated Gas Company?

A. Original vouchers.

Q. You would not know how much they paid except from those papers?

A. My records would show it, but I do not carry it in my head.

Q. Did you make up this paper, Exhibit 283?

A. It was made under my supervision.

Q. To get these prices of gas oil and wrought iron
10356 pipe somebody had to go and examine the records of the Consolidated Gas Company and dig them out?

A. They did, and I checked them.

Q. That is, you checked them from the records?

A. Every one.

Q. Do you remember what you used as to gas oil? Did you see the original contracts, or did you use the vouchers?

A. The vouchers, the bills actually paid.

Q. Who has charge of that as to gas oil?

A. Mr. Walter R. Addicks. 10357

Q. How about steel pipe. Was that information about the lowest and highest procured in the same way?

A. Yes.

Q. From the records?

A. Yes.

The Master: All of these items you got from the vouchers?

The Witness: Yes.

Q. All clear down through?

A. Everything.

Q. Were it not for these records in the depart- 10358
ment about which you know very little, with which you had nothing to do, as to gas oil, you would not know what the prices were, the high and low?

Mr. Ransom: I object to the question. It is an unfair and untrue statement of what the witness testified. The witness said that these requisitions——

The Master: Strike out from the question, "with which you had little or nothing to do".

Mr. Ransom: He passes on every invoice.

The Master: Answer the rest of the question.

Q. Do you pass on the invoices for gas oil? 10359

A. No.

Mr. Chambers: There you are.

Mr. Ransom: You said other than gas oil.

The Master: You check them to see if they are according to contract?

The Witness: They go through the auditor.

The Master: With reference to all of the items other than gas oil appearing on Exhibit 283, you checked all items appearing on that exhibit with the actual bills rendered?

10360 The Witness: Yes.

Mr. Ransom: And as far as gas oil is concerned, he also checked the vouchers, but not in the ordinary course——

The Master: He said no.

The Witness: I did; I checked everything on that statement.

The Master: Now, as to the gas oil, did you have the bills before you when you checked the statement?

The Witness: Yes.

The Master: The only difference between
10361 gas oil and the other items is that the gas oil contracts are made by Mr. Addicks?

The Witness: That is right.

The Master: And the other contracts are made by or through you?

The Witness: Yes.

Mr. O'Brien: Didn't you say a minute ago you didn't know anything about oil?

The Master: He says it yet, so far as the making of contracts is concerned.

The Witness: I do not make the contracts.

Q. Do you know whether the things for which
10362 there is a price on this Exhibit No. 283 were delivered in those years?

A. They were.

Q. Where did you get that information from?

A. I saw the bills.

Q. Do the bills which you examined show the time of delivery?

A. They do.

Q. Aside from that you would not know when the material was delivered, if it was not for the bill?

The Master: No, he would not receive it himself. 10363

Mr. Chambers: That shows that it is based on—that it is just an account.

The Master: I know what it is based on.

Mr. Chambers: I want to show the Master the foundation for this Exhibit.

The Master: We are talking to a purchasing agent now, not a receiving clerk.

Mr. Chambers: I know, but he has shown now that he hasn't any more information about these prices than any accountant that would go in there. 10364

The Master: I know what he has shown. Just to indicate to you that that statement is not accurate, I am going to bring it out.

By the Master:

Q. When you checked these various vouchers for the preparation of this statement, did you recall in fact that you had made contracts at those prices, and that those were the prices during those years?

Mr. Ransom: He didn't have anything to do with gas oil.

The Master: I mean other than gas oil.

A. I cannot go back to 1913 and say that I remember exactly the prices or what was purchased. I know after 25 years of experience about what prices are, and about what they average. 10365

Q. So that these prices, as you saw them turn up on these vouchers, were not startling to you?

A. Not at all.

Q. They were not new to you?

A. No.

Q. They were quite familiar prices to you?

A. Yes, I follow them every day.

10366 Q. So you know a little more than an accountant who would be called in?

A. It would be 25 years wasted if I did not.

By Mr. O'Brien:

Q. Wasted?

A. Yes.

Q. You drew your salary all the time?

Mr. Ransom: I object to that.

The Master: Don't answer that.

By Mr. Chambers:

Q. As to the price of gas oil—you didn't put 1919 on here?

10367 The Master: None of the items for 1919 are there, are they?

Q. What is the price of gas oil for 1919?

The Master: Just to get it clear on the record, there are no prices for 1919 or Exhibit 283, are there?

Mr. Ransom: I don't see any.

Q. What is the price of gas oil for 1919?

A. I haven't got it in mind; I can't tell you.

Q. You mean you have not studied 1919 prices on gas oil?

A. I don't know it. I have seen it, but it varies at each station, each place; it is delivered.

10368 Q. There is one very important item that goes into the making of gas, with which you are not acquainted?

A. That is right.

Mr. Ransom: We expect to call——

The Master: Don't tell me what you expect. Just go ahead.

Q. You have forgotten what it is, what the prices are now on gas oil?

The Master: You need not answer that, Mr. Gawtry. It has already been answered.

Q. You don't keep yourself posted on gas oil then? 10369

The Master: You need not answer that. He has already so stated. We will have Mr. Addicks for gas oil.

Mr. Chambers: All right.

Q. What is the quotation now on steel bars, ¾ inch to 3 inch?

A. I can't guess offhand; it changes every few days.

Q. Well, I see steel bars anyway are less now than they were in 1917.

The Master: What do you mean "now"? 10370 Where do you see that?

A. Less in 1918 than they were in 1917? Are they still going down hill, the prices? It is a fact, isn't it, that steel bars were less in 1918 than they were in 1917, according to your table? Then I am going to ask you if the prices are still declining on steel bars?

By the Master:

Q. The question is whether the prices for steel bars in 1918 were lower than they were in 1917?

A. They are lower.

Q. Is it not a fact that the government came in and restricted the price on steel bars about 1918? 10371

A. Yes.

Q. Limited the price that the steel companies could charge for it, regulated the price?

A. They did.

Q. They apparently regulated it down a bit?

A. They did, a great many things.

The Master: What is the use of wasting time on these things? The chances all are that with a free trade, unrestricted by the gov-

10372 ernment, it may go up or it may go down, but the fact remains as to 1918, everybody who knows anything about it knows that the government fixed the price.

By Mr. Chambers:

Q. Do you know what the prevailing price of wrought iron pipe is now, ¾ inch to 1½ inch?

A. It is 42.05 from the list.

Q. That is an improvement over the 1917 price, isn't it?

The Master: You mean it is lower in 1918?

Mr. Chambers: It has gone down.

10373 The Master: Lower than the low?

Mr. Chambers: Yes.

Q. Have you got your table; in other words, wrought iron pipe prices now are much more favorable than they were in 1918, according to your table, if you have given me the quotation correctly?

A. That is right.

Q. How about steel pipe now?

A. Steel pipe is cheaper now than the average of 1917.

The Master: What is your discount now?

The Witness: About 59.

Q. And iron oxide?

10374 A. I haven't made a note of recent quotations on that.

Q. How about red lead?

A. Red lead is about .1025 now.

Q. And white lead?

A. White lead is—the last quotation I have is 13 cents.

The Master: That has gone up a bit.

Q. Now, linseed oil, boiled?

A. Linseed oil raw is 2.20.

Q. How about gas holder paint? 10375

A. I haven't any recent quotations on that.

Q. How about cast iron pipe? I asked you about that, didn't I?

A. We haven't had any bids on that for some time.

Q. Cast iron fittings, A. G. I. standard, have you got anything on that?

A. $56.30 a ton.

Q. Well, per pound?

A. That is pipe, not fittings.

By the Master:

Q. What kind of pipe?

A. Cast iron pipe. 10376

The Master: Last year the highest was $49 a ton.

By Mr. Chambers:

Q. You said you didn't have any recent quotations?

A. I have on cast iron fittings.

Q. When was your last quotation?

A. September 11th.

Q. 1919?

A. Yes, a week ago.

By Mr. O'Brien:

Q. Did you get that from the Iron Age?

The Master: You need not answer that. 10377

By Mr. Chambers:

Q. Steel bars?

A. I haven't got that with me.

By the Master:

Q. Iron bars?

A. No.

Q. Brass castings?

A. The last I have is .1450.

Q. I see you have it here by the pound, 45 cents a pound for brass castings?

10378 A. That is brass scrap, not castings.

Q. What?

A. What I gave, .1450.

By Mr. Chambers:

Q. Have you got any brass castings?

A. I have not.

By the Master:

Q. Fire clay shapes?

A. No.

Q. Nine inch fire brick?

A. No.

Q. Checker brick?

10379 A. No.

Q. Lumber?

A. No.

Q. Portland cement?

A. No.

Q. Red building brick?

A. No.

Q. Malleable iron fittings?

A. No.

Q. Pig lead?

A. Pig lead is .0590 now.

Q. That is per pound?

A. 5.9 cents per pound.

10380 Q. Pig lead is what? Pig lead on Exhibit 283, the lowest in 1915, was 4.65 cents.

A. That is 5.9 per pound.

By Mr. Chambers:

Q. On here it is .0886 per pound in 1918, and now for that same thing it is .0590 per pound?

A. That is right.

The Master: Now, gas meters.

The Witness: No change in them, so far as I know.

By Mr. Ransom: 10381

Q. Were those prices which you gave prices at the mill?

A. Yes.

Q. They were not delivered prices?

A. They were not delivered prices.

By the Master:

Q. Are these prices on Exhibit 283 delivered prices?

A. Yes.

Q. So there must be added to the mill prices the cost of delivery and transportation?

A. Yes. That would vary a good deal. 10382

The Master: Mr. Chambers, the witness has just stated that the prices he has been giving are mill prices, whereas the prices shown on Exhibit 283 are delivered prices.

Mr. O'Brien: Counsel for the complainant interjected a question that conveyed the answer.

The Master: That is proper, that often takes place.

Mr. Chambers: I was trying to prepare for further cross-examination for a second, I had my head down over here, and he should not ask those questions when I am busy with something 10383 else. Counsel sticks in a question when I am not listening.

I ask to have the last question and answer stricken out.

The Master: No.

Mr. Chambers: Exception.

By Mr. Chambers:

Q. Did you have anything to do with the fixing of the price of coke—take coke for instance, did

10384 you have anything to do with the fixing of the price between these subsidiary companies?

Mr. Ransom: I object to that.

The Master: I shall sustain the objection to that question as not being within the range of cross-examination.

Mr. Chambers: Exception. That is all.

The Master: Mr. O'Brien?

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Gawtry, you have been with the company I think you said for twenty-five years?

A. Yes.

10385 Q. You are the son of Harrison E. Gawtry, who was for a long time an officer of the company?

A. Yes.

Q. He was there at the time of the consolidation of the present company?

A. Yes.

Q. And in fact had a great deal to do with it?

A. He had a good deal to do with it.

Q. And prior to that time he was one of the officers of the Municipal Gas Company?

A. That is right.

Q. And your years, I suppose, have been entirely spent with the company, have they?

10386 A. Twenty-five years.

Q. Prior to that time were you in some other occupation?

A. I was in the First National Bank for a while.

Q. But we may say that your lifetime has been spent in the gas company's employ?

A. Practically.

Q. And beside of having charge of the purchasing department you fill the office of vice-president?

A. Yes.

Q. Do you fill any other office in the company? 10387

A. In the gas company?

Q. Yes.

A. The Consolidated Gas Company—no.

Q. Are you one of the executive committee that was referred to?

A. I am not.

Q. Who makes up that committee?

A. The executive committee?

Q. Yes.

Mr. Ransom: I object to the question. I think it is already in the record.

The Master: I will let him answer. 10388

Mr. Ransom: If the witness can give the complete list I have no objection.

A. Mr. William Rockefeller; F. A. Vanderlip; George E. Cortelyou; Mr. Nicholas F. Brady; Walter R. Addicks; J. A. Garver. No, I think Mr. Addicks is not a member of the executive committee.

Q. Mr. Rockefeller owns extensive interests in the Standard Oil Company of New Jersey, doesn't he?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, will you permit me to argue that with you a minute? 10389

The Master: No, I know your point. You want to show the close relations between this company and the Standard Oil Company.

Mr. O'Brien: I do.

The Master: This witness in fact had already started to say that he doesn't know what Mr. Rockefeller's interests in the Standard Oil Company are. Is that so?

The Witness: I haven't the slightest idea.

10390 The Master: That ends it. I will not let you ask him any more questions on it.

Mr. O'Brien: I will take an exception to your Honor's ruling.

The Master: I am going to let you examine Mr. Addicks, when he comes, as to the basis of the gas oil prices fixed, but not this witness.

Mr. O'Brien: This does not go to the question of oil, these questions that I am going to ask will tend to show a great many things in connection with these companies.

The Master: Let us hear the next question.

10391 Q. Mr. Nicholas F. Brady, to whom you have referred, is President of the New York Edison Company?

Mr. Ransom: I object to that as incompetent and immaterial and not within the scope of cross-examination.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. And Mr. Cortelyou is the President of the complainant company?

A. He is.

Q. And Mr. Garver is a member of the firm of Shearman & Sterling, counsel for the complainant?

10392 A. He is.

Q. This is the executive committee that passes upon expenditures, whose records are recorded in the books called "Approvals of the Executive Committee"?

A. It is, it passes on all expenditures.

Q. How frequently do they meet?

A. Once a week.

Q. Is it an appointed time?

A. Yes.

Q. They have a certain fixed hour for that?

A. Every Tuesday. 10393

Q. Do you know how long they are in session?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: I call to your Honor's attention here the statement made during the testimony of the witness as to the part played by the Executive Committee in the matter of purchases.

The Master: I don't care how long they are in session.

Mr. O'Brien: Exception.

Q. Do you know Mr. Gawtry, whether Mr. Brady 10394
is connected with any of the coal companies that you have referred to to-day as selling coal to the complainant company?

Mr. Ransom: I object to the question as not within the scope of cross-examination.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I don't think he is connected with any coal company.

Q. Do you know whether Mr. Rockefeller, who, you say, is a member of the Executive Committee, is connected with any of the coal companies to which you have referred as having sold coal to the 10395
complainant company?

Mr. Ransom: I object to the question on the ground that it is incompetent, immaterial and not within the scope of the cross-examination of this witness.

The Master: I will allow it.

A. I don't think Mr. Rockefeller is connected with any coal company that I know of.

Q. Do you know whether either of these two

10396 gentlemen were at any time connected with those companies within the past twelve years?

Mr. Ransom: I object to the question as quite immaterial.

The Master: I will allow it.

A. As far as I know I do not think they have ever been connected with any coal company.

Q. Do you know whether they are connected with the Erie Railroad or the Lehigh Valley Railroad, or the Philadelphia & Reading Railroad?

Mr. Ransom: I object to the question.

The Master: I will allow it.

10397 Mr. Ransom: Referring now to the companies?

The Master: Yes.

A. Mr. Brady is not a director of any of those railroads, and I do not think Mr. Rockefeller is. I am very sure of it. It is a matter of record.

Q. The complainant company purchases coal from the Berwind-White Company?

A. Yes.

Q. You did not enumerate them among the companies in your direct testimony from which the complainant purchased coal?

A. I most certainly did—some of our largest

10398 purchases.

Q. You did mention it, you say, in your direct testimony?

A. Most assuredly, from whom we make some of our largest purchases.

The Master: I do not recall your doing so.

The Witness: I read them off.

The Master: I do not recall your mentioning them.

Q. Is Mr. Berwind a director of the complainant company?

A. He is not. No Mr. Berwind. 10399

Q. What?

A. There is not a man named Berwind who is a director of the Consolidated Gas Company.

Q. Was there ever a man of that name a director of your company?

A. No.

Q. Do you know Mr. Berwind?

A. Yes.

Q. Your company has purchased coal from this Berwind-White Company for a number of years?

A. It has.

Q. What proportion would you say is purchased from the Berwind-White Company during the period covered by the schedule presented by you? 10400

The Master: Referring to Exhibit 283.

Mr. Ransom: Bituminous or anthracite?

Mr. O'Brien: Both kinds.

By the Master:

Q. Do they handle both hard and soft coal?

A. No, only soft coal.

Q. Berwind & White handle only soft coal?

A. Only soft coal.

Q. What percentage of your purchase price for five years were made from them?

A. Less than twenty per cent. Probably nearer fifteen per cent of the total. 10401

By Mr. O'Brien:

Q. Of the total coal or the total soft coal?

A. The total bituminous coal.

Q. Are any officers of the complainant company or any of its directors connected in any way with the companies that sell you coal?

A. Not one that I know of.

Q. Not that you know of?

A. No officers, I am sure.

10402 Q. Any of the directors?

A. Mr. George F. Baker may be a director. He is a director of some of the railroads, anthracite railroads. Whether he is a director of the coal companies shipping coal over those railroads or not, I do not know. That is a matter of record.

Q. There are certain coal companies affiliated with and under the control of certain railroad companies?

Mr. Ransom: I object to the question. It calls for a conclusion and it is an assumption which is contrary to facts.

10403 The Master: I will sustain it. I do not know whether it is contrary to facts or not, though.

Mr. O'Brien: The witness made a statement that he knows.

The Master: No.

Mr. O'Brien: He made a statement with regard to the Williams & Peters Company handling the Erie Railroad Company's coal.

Q. Didn't you?

A. Yes, they advertise that. They are the Sales Agents.

Mr. O'Brien: Yes, that is why I asked the question, your Honor.

10404 The Master: The next question. I sustain that objection.

Mr. O'Brien: Exception.

Q. What proportion of your coal, of the coal purchased by the complainant company in the year 1918, was purchased from Williams & Peters, roughly?

The Master: What did they handle, hard or soft?

The Witness: Anthacite coal.

A. Probably 30 per cent. 30 to 35 per cent. 10405

Mr. Ransom: Of the anthracite?

The Witness: Anthracite only.

Q. You take practically all of the Williams & Peters output, do you not?

A. No.

Q. They sell only to gas companies; you know that?

A. They sell broken coal to gas companies, because gas companies are the only users of broken coal in the city here, practically.

Q. Do you know anybody else that Williams & Peters sell coal to, other than gas companies? 10406

A. The railroads take it.

Q. You would consider Mr. Harry Peters fairly well posted on the prices of coal for the years 1917 and 1918, would you not?

Mr. Ransom: I object to the question as immaterial and incompetent.

The Master: I will let him say.

Mr. Ransom: Why is he asked to pass upon the qualifications of some person who occupied a Federal office during a period, or who might be called as a witness in this case?

The Master: I think you are right about that. 10407

Objection sustained.

Q. You know Harry Peters?

A. I do.

Q. You know he is the Peters of that firm we have mentioned, Williams & Peters?

A. He is the younger Peters.

Q. What?

A. He is the junior Peters.

Q. You remember he was a member of the Fuel Commission?

A. Yes, sir.

10408 Q. Which made the prices for coal during the year 1918?

A. No, sir.

Q. Did you meet him in your official capacity?

A. I have known him for years, yes.

Q. Do you meet him in connection with his position in the Fuel Commission?

A. Yes.

Q. Who went to Washington to complain about the interference with your supply of coal?

A. I did.

Q. You were present at some of their sessions,
10409 were you?

A. Yes, a great many.

Q. Did you register a written protest in behalf of the complainant company against their interference with the contracts made by the complainant company prior to our entry into the war?

A. No.

Q. Did you register any protest against the method that was adopted of naming prices and directing the deliveries of coal?

A. By word of mouth, yes, frequently.

Q. And in substance, what was the protest?

Mr. Ransom: I object to it as immaterial.

10410 The Master: I will allow it.

Mr. Ransom: Exception.

The Master: What was the protest?

The Witness: We were not getting the coal; we were anxious to have coal, begging for coal, we had to keep going, we have got a tremendous responsibility here to keep continuous service in New York City in this gas company, and we have got to keep going, we must have the coal. And I made it as strong as possible, to the Fuel Administration.

The Master: And you kept repeating that all the time? 10411

The Witness: I did, I would appear frequently, and have representatives there.

The Master: And you always made the same speech?

The Witness: Practically; got tired of it.

Q. Was there any protest made against the interference with the contracts that you had for deliveries of coal, made prior to our entry into the war?

The Master: Objection sustained.

Q. You say that you took charge of the matter of distribution of the coal purchased in bulk for the complainant company and some of the affiliated companies? 10412

The Master: Objection sustained upon the ground that you are now trying to cross-examine the witness upon something brought out by the cross-examination of Mr. Chambers, and I won't permit it.

Q. Did you personally go into the facts of the quantities on hand of the several companies, acquaint yourself with them?

A. Yes.

Q. Have you got records of amounts on hand at any time during the period 1917, 1918? 10413

A. Yes.

Q. Of the several companies?

A. Yes.

Q. They are on file in your office, are they?

A. Yes.

Q. And are available for inspection if counsel directs that you permit them to be inspected?

A. In great detail.

Q. With great detail?

10414 A. Yes.

Q. And did the amount of coal on hand of those several affiliated companies have any influence on the amount of gas that they were producing during that period?

Mr. Ransom: I object to the question. I don't believe this witness is qualified to answer that.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you got a record on that paper you speak of, or those papers, where you have worked
10415 out in great detail the amount of coal on hand, have you got a record of what has been on hand from time to time at Astoria during the year 1917 and 1918?

A. Yes, sir.

Q. And speaking about deliveries of coal, Mr. Gawtry, you gave us in some instances the alongside price. When you referred to that price you meant—that was the word used by counsel—you meant the amount paid by the complainant company?

A. Correct.

Q. Per ton?

10416 A. Yes.

Q. Now, who did, during the years 1917 and 1918, your lighterage work?

A. It was done by different firms.

Q. What firms did that?

A. M. & J. Tracey did a good part of it.

Q. A great part of it?

A. Yes.

Q. Who else—he does a lot of work for gas companies?

A. Yes, and has for—before I was born, I guess.

Q. And what other firms? 10417

A. McLean Transfer Company.

Q. Clayton?

A. McLean.

Q. M-c L-a-i-n?

A. M-c L-e-a-n, I think it is.

Q. What others, Mr. Gawtry?

A. Well, a lot of this coal is delivered alongside of our docks, so I don't know who delivered it.

Q. Well, you have seen the vouchers?

A. It does not show.

Q. Do not the vouchers have the name of the tugs, the "Nellie", the "Annie", and so on, and the 10418 "Bessie"?

A. Yes, they have the names of the tugs.

The Master: Do you know who the "Bessie" belongs to?

The Witness: No, I do not; I never saw it.

The Master: Does "Nellie" belong to you?

The Witness: I will prove an alibi.

Q. Well, M. J. Tracey does the bulk of your work in this respect?

A. They do a large proportion of it.

Q. And they have been doing it for a number of years?

The Master: You don't need to answer that. 10419

Q. And they make the price right and acceptable to the company?

A. Yes.

The Master: Well, isn't there, Mr. Gawtry, a standard lighterage price in the harbor, from time to time?

The Witness: There was during the year.

The Master: Yes.

The Witness: But in years gone by, there has not been, except——

10420 Q. What was that, twenty cents?

A. Oh, no, it jumped from twenty to forty-five and fifty.

The Master: I asked him and he has given us those figures, but I thought there was a standard price published by the lighterage people from time to time.

The Witness: There was, yes.

The Master: When, during the year?

The Witness: Under the government fixing the price during the years, but there is a standard price.

10421 The Master: That is what I mean.

The Witness: But this year——

The Master: But it is not lived up to?

The Witness: Oh, yes, it is lived up to, but it is not made by any federal control.

The Master: I had the impression the lighterage people generally had a fairly standard price for doing lighterage?

The Witness: Yes, they do.

Mr. Ransom: The association price.

The Master: I don't know whether it is an association price, but I think there is a rather general standard.

10422 Q. Do you know what the limit is down the bay, the lighterage limit?

A. As to limit, I don't know what you mean by limit.

Q. You refer to the limit being 96 feet in the North River?

A. Oh, from the lower ports, from South Amboy.

Q. That is the lowest limit?

A. South Amboy is the lowest point.

Q. And toward Bay Ridge, what is the limit?

A. I don't know; we don't ship anything there.

Q. Have you prepared a schedule showing from month to month the variations in the prices paid by your company for coal and for lighterage, quantities purchased from month to month? 10423

A. From month to month. I could give such a schedule. I have not got one. I got the information, but I have not put it in just as you have described it.

Q. Well, could you give us those prices fairly well from memory?

A. Not from memory.

Q. The variations were not so many during the year 1918? 10424

The Master: He gave us those.

The Witness: I gave those from my record.

The Master: He gave us the dates when the prices were changed.

Mr. O'Brien: The prices that were given were, as I understand it, or if I understood it at the time, the prices fixed by the Fuel Administration.

The Master: That is 1917 and 1918?

The Witness: Yes.

Q. But they did not fix the price of lighterage?

A. They did not fix the price of lighterage, no, not the Fuel Administration. 10425

The Master: But other public officials did?

The Witness: Other public officials did, the shipping board I think it was.

Q. And you could get up such a statement that would show those variations?

A. Easily.

Q. You have the data in your files that would make that easy?

A. Yes.

Q. Well, now, when you say they ran up to 40

10426 and 45 cents, that was only for a brief period, wasn't it?

A. We are paying 50 cents now, sir.

Q. Well, I mean during the years in question. That don't answer.

A. It ran for a long period of 1918.

The Master: The greater part of the year 1918 was at the higher rate?

The Witness: At least half of the year, I should say.

The Master: At the higher rate?

The Witness: Forty-five and 50 cents, de-

10427 pending upon the date of delivery.

Q. And prior to that it was down below?

A. It was lower.

The Master: It started in at 20 or 25 cents, he said. You have had that.

Q. Are these contracts with M. & J. Tracey made in writing?

A. We do not make any contracts with M. & J. Tracey.

Q. Well, you make an agreement with them to deliver you coal, don't you?

A. No, the people from whom we purchase the coal deliver it alongside of our dock, and they make

10428 the contract with Tracey.

Q. In every instance?

A. In every instance. We have no contract with Tracey.

Q. Well, you have not produced any coal contracts except those that were made some five years ago?

Mr. Ransom: I object to that question because——

The Master: He has not testified and it is

easy enough for the witness to say he has not. 10429
He knows.

Mr. Ransom: He has.

The Master: More than five years.

Mr. Ransom: He said except those made five years ago. Here are 1919 contracts.

The Master: I understood his question to be not any made more than five years ago. What was your question?

Mr. O'Brien: Well, I said—he is right. Judge Ransom is right.

The Master: He did produce some.

Mr. O'Brien: I said, you have not produced 10430
any contracts except those that were made five years ago?

The Master: Yes, he has produced some made recently.

Q. Well, the answer is you have produced two made during the year 1918?

A. Correct.

Q. And they were made by the same firm of Williams and Peters, were they?

A. And Lehigh and Wilkes-Barre Coal Company.

Q. And the Lehigh and Wilkes-Barre Coal Company?

A. Yes. 10431

Q. Now, take the year 1918, Mr. Gawtry, and tell me the names of the firms, all of the firms, that sold you coal.

Mr. Ransom: You mean anthracite?

Mr. O'Brien: Of all kinds.

The Master: No, we have had that once before.

Mr. O'Brien: No, we have not had it, your Honor, if I may say so. He has not given the names.

10432 The Master: I shall rule that the witness has already answered it. The witness confirms the Master's statement by stating that he has given all of those names.

Mr. O'Brien: He did not mention Berwind before, and we brought it to your Honor's attention.

The Master: He says that was in error.

Q. What local dealers have you bought from in 1918?

The Master: What do you mean by local dealers?

10433 Mr. O'Brien: I mean local dealers. He said there were certain percentages allowed by the Fuel Commission.

The Master: Did you give us the names of all the concerns, or only the producers from whom you bought?

The Witness: All the concerns.

The Master: Everybody?

The Witness: Everybody.

The Master: All right. Read them.

The Witness: Pittsburgh Coal Company, Berwind-White Coal Mining Company; Westmore Coal Company; Consolidation Coal Com-

10434 pany, Jamieson Coal Mining Company, Williams & Peters, Philadelphia & Reading Coal and Iron Company, Thorne, Neale & Company, Lehigh Valley Coal Sales Company, Stokes & Sons, Incorporated.

Q. You did not mention them before, did you?

A. I read this list, I thought I did.

Q. No, you did not read that list.

The Master: Don't argue with the witness.

Mr. O'Brien: I am going to take exception, your Honor.

The Master: The Master's recollection is that he did not mention Stokes. 10435

The Witness: Well, I had this list here.

The Master: And I thought he omitted it, because the question was directed to producers, to be perfectly fair to the witness, and that is why I asked him the question. Now you have Stokes. Go on.

Q. Are you sure that that is all the list of coal people that sold you coal of any kind during 1918, and delivered it?

A. Yes.

The Master: Producers or dealers? 10436

The Witness: Producers or dealers.

The Master: That is anthracite coal?

The Witness: Anthracite coal and bituminous coal.

The Master: All of the coal?

The Witness: All the coal.

Q. Did you borrow any coal from any of the affiliated companies?

A. No, we did not.

Q. Did you buy any from them?

A. Not a ton.

Q. Can you give us from that record that you have in your hand the quantities or proportionate quantities, not the detailed tons but the proportionate quantities, from those several companies? 10437

A. The proportionate quantities, 1918?

Q. Yes.

A. Pittsburgh Coal Company, 150,000 tons; Berwind-White Coal Company, no fixed amount, we made no contract with them.

The Master: Do you know how much you got?

10438 The Witness: About 60,000 or 70,000 tons I should say, or 50,000 or 60,000. The Consolidated Coal Company——

Q. This is all anthracite coal now?

A. Oh, no, bituminous. (Continuing) 150,000; Westmoreland Coal Company 75,000 tons. This is what they should have delivered, agreed to deliver. Of course they did not do it because the railroads and coal mining conditions were such that they could not deliver. Jamieson Coal Company 100,000 tons, delivered a small amount; J. H. Weaver & Company agreed to deliver as much as
10439 they could deliver, delivered 4,000; Lehigh and Wilkesbarre Coal Company promised to deliver 100,000——

The Master: How much did they give you?

The Witness: Oh, seventy or eighty, I should say; Williams & Peters promised to deliver as much as possible, probably seventy or eighty; Philadelphia & Reading Coal and Iron Company 40,000, and that was afterwards cut in half by the United States Fuel Administration; Thorne Neal & Company 75,000 tons, that is D. L. & W. coal; Thomas Stokes & Sons, Inc., 60,000, that is D. L. & W. coal; Lehigh
10440 Valley Coal Sales Company promised to deliver 10,000, gave pretty near that.

Q. Now, before the vouchers are paid, do they come in for your O. K.?

A. No, these prices are filed with the auditor, the auditor passes on them.

Q. And your connection ceases with them then?

A. Once I make a contract and file the prices with the auditor, that coal purchased from such and such a concern, or materials from such a concern,

the price is so and so if it is modified, changed or revised, I modify it. 10441

The Master: You are a purchasing agent?

The Witness: Yes, that is all.

Q. But you are not charged with the duty of checking the bill with the O. K.'s of the several men who receive it for the company, or check it up, and of checking it up with the contract that you made?

A. I don't do that.

Q. After you make the contract, it ceases, and the question as to the fact of the delivery or the conditions under which it is delivered goes over to somebody else connected with the company? 10442

A. We have hundreds of thousand of bills, and I could not do that.

Q. You don't know whether these contracts are abrogated or modified after they leave your hands?

A. I do.

Q. How do you know that?

A. Any modification of the contract, any addition or subtraction or change in tonnage or anything else, would have to come right to me.

Q. Well, you would expect it to come to you, but you don't know whether it does or not?

A. Yes, I do know, because I see most of the coal bill myself, because I sign a great many checks in 10443 payment for them.

Q. Oh, are you treasurer too?

A. No, vice-president.

Q. You sign them as vice-president, acting for the president?

A. No, checks are signed by two officers, the treasurer or assistant treasurer, one of the vice-presidents, the president, assistant secretary or secretary; two signatures to every check.

Q. I know, but the vouchers come in say, for

10444 delivery of 15 or 20 tons of coal during the month of April, 1918, you would not know whether the contract was modified, you would simply have the contract price and sign it on the O. K. of the man who O. K.'d the bill, wouldn't you?

The Master: Let us find out about this now. As I understand it, Mr. Gawtry, the practice in your company is that you are the purchasing agent, and you make the contract, is that right?

The Witness: I haven't the title of purchasing agent now; I am in charge of purchases.

10445 The Master: As vice president, you are in charge of purchases?

Mr. O'Brien: There is a purchasing agent under him, your Honor.

The Master: I understand that. But the business of making the contracts for the company comes under your jurisdiction as one of the vice presidents?

The Witness: Correct.

The Master: And it is the practice of your company that you are the man who has charge of that?

The Witness: Yes.

10446 The Master: Have you found in the last two or three years on any occasion and in any way, that any contract had been changed without your signature?

The Witness: No.

The Master: Or within the last five years?

The Witness: No, never.

The Master: Ten years?

The Witness: Never.

The Master: Have you ever heard of an in-

stance where any other officer of the company had undertaken to change the terms of a contract made by you? 10447

The Witness: No.

The Master: Go on to the next question.

The Witness: Surely not.

Q. You are not on this executive committee that passes on these things?

The Master: Objection sustained.

Q. Speaking about the storage of coal, you say if you take it above 90th street on the East River, you have got to pay a charge?

A. 91st street. 10448

Q. Don't you deliver some coal by trucks from one of your yards to another?

A. No.

Q. Never?

A. It may have been done, a few truck loads in emergency. I do not know of it. I would not say it has not been done, but it is not the practice. All coal is delivered alongside in boats.

Q. Would you change your view if I were to tell you I saw the National Coal & Coke Company's wagons bringing down coal to the 99th street plant from up above? 10449

A. I should be very much surprised.

Q. In the deliveries of coal where the lighterage was part of the—was a factor in the cost, you could have delivered, couldn't you?

The Master: I don't get your question, Mr. O'Brien.

Q. You could have delivered your coal from one of the downtown stations?

The Master: Did you ever figure out whether

10450 it would cost you more to move it up town from a downtown station?

The Witness: Where we use five or six hundred tons a day, or fifteen hundred tons a day, as we do in some stations, it would be a physical impossibility.

The Master: Would it cost more to truck it up from downtown than to lighter it up there?

The Witness: Of course.

The Master: Why, of course, it would.

Q. Well, you have an immense storage place over at 42nd street, haven't you?

10451

A. No, not a large storage place.

The Master: I won't permit any more questions on it, because it is perfectly ridiculous to assume that this Company, because it saves five cents a ton will handle and carry it over the docks at 42nd street and store it there and then cart it up to Harlem. It would cost them $2 more a ton to do it. Perfectly silly on its face.

Mr. O'Brien: It may seem to you ridiculous, but I am sorry that you are passing judgment on it so quickly before I am through with the

10452 witness.

The Master: I won't let you ask any more questions.

Mr. O'Brien: This is a question of coal storage, and the question of taking coal the best way you can get it.

The Master: The best way to get it is the nearest to your storage plant, not dumping it downtown and then carting it up.

Q. What was the plant where you say you used 1,600 tons a day?

A. Astoria, they do, and more. 10453

Q. Oh, you had the Astoria in mind when you made that statement?

A. Yes.

Q. There is a lot of coal stored in 42nd Street, is there not?

A. Not much.

Q. Do you know how much?

A. On the 15th of September at 42nd Street there was 1,501 tons.

Q. You do not call that much?

A. No.

Q. Do you store any coal at Shadyside?

10454

A. We do not.

Q. Have you during the past five years?

A. We have not.

Q. What do you use Shadyside for?

Mr. Ransom: I object to the question.

The Master: Sustained.

Q. Do you use the yards of any of the other companies to store your coal?

A. We do not.

Q. Have you during the past five years?

A. We have not.

Q. You said that generally speaking you have competitive bidding. Will you take this list and 10455 tell me what articles are bought under competitive bidding?

A. Yes.

Q. Referring to schedule, Exhibit 283 (hands same to witness).

A. Coal is purchased at competitive bidding; bituminous coal is purchased at competitive bidding, buckwheat coal is purchased at competitive bidding; wrought iron pipe is purchased at competitive bid-

10456 ding. The same for steel pipe. Iron oxide is a patented material.

The Master: Which is not purchased at competitive bidding?

The Witness: Which is not purchased at competitive bidding. We get competitive prices on red lead, white lead, linseed oil, gas holder paint, cast iron pipe, cast iron fittings, iron castings, steel bars, iron bars——

Q. Practically everything on the list?

A. Practically everything on the list, Mr. O'Brien.

10457 Q. Is competitive bidding?

A. Yes.

Q. Will you just tell me the method of getting competitive bids? Do you hand a form around to all companies who sell coal?

A. We do not ask for bids; we go to see what coal they have got, because we cannot use every coal. The coal we use in our gas works is a very restricted quality of coal——

Q. Is all the coal you bought in the last year of good quality?

Mr. Ransom: Let him finish his answer.

The Master: Had you finished your answer?

10458 The Witness: No, I had not.

The Master: Finish it.

The Witness: You can buy coal, we will say, in round figures, at one dollar or two dollars a ton, the same as you can buy cigars at ten cents or twenty-five cents.

Q. Go ahead, Mr. Gawtry, and finish your answer.

A. You have got to buy coal suited to your condition, suited to the manufacture of gas.

By the Master: 10459

Q. What Mr. O'Brien was trying to get at, Mr Gawtry, was the fact that you used a limited quality of coal?

A. Correct.

Q. Is there a limited number of men who handle that coal?

A. Yes.

Q. Do you ask all of the concerns who handle that quality of coal to give you their prices?

A. We do, probably thirty or forty other different kinds of coal. We analyze every cargo of coal that comes into our works. We know practically 10460 every kind of coal that has ever been mined in the eastern country, where it can come to this market. We have a very elaborate knowledge, a very detailed knowledge on that.

By Mr. O'Brien:

Q. Then we may assume in your judgment all the coal that has been delivered during the period covered by your schedule has been excellent coal, of the class mentioned?

A. No, sir; it has not been excellent quality. We would like it to be much better. We often get cargoes of high ash or high sulphur.

Q. You could get the best quality by paying the 10461 higher prices?

The Master: The witness has testified that they do not get the quality they hope to get by the prices they pay, very often. Is that so?

The Witness: Since the war, yes.

Q. Instead of giving us this excuse for going to a limited number of bidders, will you say that there are other people outside the people you have mentioned from whom you sought bids?

10462 The Master: The question will not be allowed, because I do not want you to characterize the witness' answer as an excuse. The witness is here to testify to the truth, not to make excuses for anything. I think you approach witnesses in the wrong attitude, Mr. O'Brien. Mr. Gawtry has no personal interest in this litigation; he is a man of standing in the community, an officer of this company, and ought to be protected like a gentleman, not charged with making excuses. He is telling you what he understands to be the fact. It is your province as counsel for the defendants to test the accuracy of any statement that he makes in a proper fashion, but I do not want characterizations, that the witness made an excuse for doing something.

10463

Mr. O'Brien: Previously, your Honor, he had mentioned in connection with some purchases, to get certain material they go to people they know will produce the quality. Isn't that so, Mr. Gawtry?

The Master: The next question. Ask the next question.

10464 Q. Does the list of coal dealers from whom you purchased last year embrace the dealers from whom you sought bids during that year?

A. We sought bids from probably fifteen more dealers than we purchased from, and could not get the coal.

Q. How about previous years?

A. That applies to every year.

Q. Do you use a form letter that you send out during the contract-making season?

A. Not on coal.

Q. Do you confine the bidding to the people 10465
of recognized standing, or that you found by experience could deliver the kind of coal you wanted?

A. We have got to know what coal they have got, we have got to know what mining facilities they have got, what railroad they ship over, what cars they have got, the quality of coal at the mine, their preparation, their tipples, their sorting. We have got to know what ports they come to. We could not have all of our coal come to one port, you know, because we bring in about 900,000 tons a year. We have got to know their financial standing, and a thousand and one things, Mr. O'Brien. 10466

By the Master:

Q. Just to get this matter closed once and for all, Mr. Gawtry, there are a certain number of concerns in this country who produce the character of coal that you want?

A. Yes, sir.

Q. And who come in at certain ports and over certain roads. In asking for bids you ask it of all the concerns and people that can furnish the coal that you want, do you?

A. Yes, sir, we do.

Q. In letting out your contract you have in mind 10467
the amount coming over certain roads and coming into different ports, and you anticipate difficulties in handling; is that correct?

A. We do.

By Mr. O'Brien:

Q. Did you ever ask Burns Brothers for a bid?

A. No.

Q. Worden & Lobdell?

A. No.

Q. Dickson & Eddy?

A. Yes, Dickson & Eddy.

10468 Q. Have you a list of the others that you have asked to send in bids, who never did sell you any coal?

A. To answer that question, Burns Brothers purchase from the same source that we do; they pay the same price that we do, and if we should go to Burns Brothers, they would have to add a profit.

Q. You tell me some of the people you bought coal from are small dealers; is that so?

A. I do not know.

Q. Jamieson Coal & Coke Company, how large a concern is that?

10469 A. It is probably rated at five or ten million dollars, one of the largest concerns in Western Pennsylvania.

Q. How about Weaver?

A. Weaver is the same. Weaver is the same. Weaver supplies hundreds and hundreds of thousands of tons of coal to the Admiralty, the Navy here.

Q. You would not call Stokes a large owner, would you?

A. He is a commission jobber. He has not a mine of his own.

Q. You would not call him a jobber, would you?

10470 The Master: As I understand it, the Consolidated bought from Stokes when they had to get some.

The Witness: That is all.

Q. You would not buy from them regularly, because they buy at the same places that you buy, the same as Burns?

A. Yes.

By Mr. O'Brien:

Q. You bought from them last year?

A. We made a contract for twelve months. 10471

The Master: Is that the only way you could get it from him?

The Witness: Yes.

Q. Mr. Gawtry, what you have said applies to the various kinds of coal?

A. Yes.

Q. There are not as many dealers handling bituminous, I take it, as the anthracite?

A. A great many more.

Q. A great many more?

A. Yes, because we draw from two fields. For the bituminous we draw from Central Pennsylvania, the Westmoreland County, and from West Virginia. The West Virginia coal is a little high in sulphur, and not very good. 10472

Q. I suppose that the Consolidated is one of the largest purchasers of coal in the eastern part of the United States?

A. I think so.

Q. Has the company ever gone into the question of owning their own mines?

Mr. Ransom: I object to that.

A. No.

The Master: You did not think it was feasible? 10473

The Witness: No, we thought we ought not to go into that business.

Q. When was that taken up?

Mr. Ransom: I object to that.

The Master: You need not answer that. If the witness had not answered yes when that first question was asked, I should not have permitted the next one.

Mr. O'Brien: The question of the economy of these prices is before us.

10474 The Master: I am not going to take any evidence as to the possibility that this company might have gone into the coal mining business, and gotten the coal one cent cheaper than they get it now. By the time they had a separate organization, separate plants, and operating a separate mining company, it would cost them just as much as they are paying for it.

Q. Has the Complainant Company ever gone into the question of buying directly from the mines?

The Master: That question is not allowed. The witness has testified that he buys directly from producers.

10475 Q. Is every one who sold you coal, except the smaller dealers you mentioned, a producer? Are they owners of mines?

A. Except Stokes.

Q. All the others own the mines?

A. Own mines and are producers direct. There are no middle men, no commissioners.

Q. They are not holding companies?

Mr. Ransom: I do not think that is material.

The Master: I will not allow that. Of course, they may be holding companies.

A. I don't think so.

10476 Mr. O'Brien: Both the witness and the Master have passed comments on my questions, and I would like——

The Master: The witness says that he does not think any of the companies from whom they buy coal are holding companies. The next question.

Q. Now I will put the question directly to you, and let us get a positive answer: Is every one of the other companies with the exception of Stokes an owner of the mines?

A. They are. 10477

The Master: To the best of your knowledge?

The Witness: To the best of my knowledge and belief, they are.

Q. They own the mines?

A. They do.

Q. Directly?

A. Directly.

Q. What mines do Williams & Peters own?

The Master: The objection to that is sustained.

Mr. O'Brien: I want to show, your Honor——

10478

The Master: I do not care about it, Mr. O'Brien. This witness may be all in error about that.

Mr. O'Brien: I say he is in error, that is why I am asking him the question.

The Master: I do not think it makes any difference. Objection sustained.

Mr. O'Brien: Exception.

Q. What mines do Williams & Peters own?

Mr. Ransom: I object.

The Master: Objection sustained.

Mr. O'Brien: I want to ask the same question about each one of the other companies and note an exception to your Honor's ruling. 10479

The Master: The objection will be sustained to each question.

Q. Has the company ever gone into the question of the royalties?

A. I do not understand. Royalties where?

A. Royalties paid by producers?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. O'Brien: Exception.

10480 Q. Coming down to wrought iron pipe, how extensively do you go into competitive bidding?

A. Very extensively.

Q. Would you name the houses that are asked to bid?

A. We buy from different mills. We buy from the people who make the pipe. We buy it in carload lots.

Q. What are the firms that you buy from?

A. We buy from the Jones & Loughlin Company, the Reading Iron Company, we buy from some of their selling agents here, from the National Tube
10481 Company, the John Simmons Company, Pancoast & Rogers.

Q. Your cast iron pipes, from whom do you solicit bids, if any?

A. We do solicit bids from the United States Cast Iron Pipe & Foundry Company, the Warren Foundry & Machine Company, John Fox & Co., or Sons. We cannot bring the pipe from Alabama here. We cannot get it. The freight rates are against us. We do not ask it.

Q. Any of the other firms that are well known?

A. That is all I think of at present. R. D. Wood
10482 & Co. of Philadelphia we purchase from.

Q. I take it there were not many mains laid in 1917 or 1918, by the complainant company?

A. There were not.

Q. Very little purchasing done at that time, during those years?

A. There was very little purchasing done.

Q. The same might be said of construction during the years 1917 and 1918?

A. Very little.

Q. Purchases of lumber and brick were likewise very small, were they?

A. Nominal. For our ordinary repairs. We have 10483
a good many repairs; we have large plants that we have to maintain.

Q. I understood you to say when you were asked about 1919 that you did not purchase any holder paint during the present year?

A. I think we have.

Q. You think you have purchased it?

A. Yes, sure.

Q. Mr. Chambers asked you that price, but perhaps you have forgotten it?

A. I said I had not the price, but we did purchase paint. I did not have the price. We pur- 10484
chase a good many different kinds of paints, different colors.

Q. You purchased the holder up in Kingsbridge station; did you purchase the paint this year?

A. Yes.

Q. That was a pretty big job; could you name the purchase price?

A. I could not, no.

Q. I suppose the purchasing agent under you takes charge of all this business?

A. He would know more about that detail than I would.

Q. You do not have the time to go into these 10485
details?

A. A good deal.

Q. Except in a supervisory way?

A. In a supervisory way. I cannot carry every price in my head, Mr. O'Brien.

Q. He reports to you how many times a week?

A. I see him every day or so. He is on the telephone within fifty feet of my room all the time.

10486 Q. But you depend upon him to take complete charge of that matter?

A. Not that I know. We have competitive bids on that holder paint. We consider which is the best paint to use, we analyze the paint, see what is in it, all the ingredients, and all that sort of thing.

Q. Where do you do all these things?

A. We have our laboratories.

Q. Where are they?

A. In Astoria.

Q. Do you have your own men over there?

A. Yes.

10487 Q. Or some of the Astoria people?

A. We have our chief chemists, Consolidated men.

Q. Some of the others, the Astoria people?

A. Some of the Astoria people.

Q. Getting back to the pipe, do you do much business with R. D. Wood?

A. Not in recent years.

Q. Would his prices be considered standard for the last ten years?

A. Just explain the meaning of "standard", as you apply it.

Q. Would his weights be standard?

10488 A. I think most of the pipe or all of the pipe is made under the A. G. I. standard, the American Gas Institute standard.

Q. Since when?

A. Since that was put into effect, about ten years ago. I am guessing at that.

Q. Are you sufficiently acquainted with the oil contracts or the purchases to say what kind of gallons are covered by your contracts?

Mr. Ransom: I object to the question.

The Master: I think he is sufficiently familiar with it to say that. 10489

A. I am not familiar with it at all.

Q. You could not say whether the gallon is Standard Imperial, or the regular gallon?

A. I could not.

Q. Do you know what the Standard Imperial gallon is?

A. I could not give you the definition of it. I do not know the cubical contents of it, compared with the others, no.

Q. If there were any deductions or rebates made on any of these purchases, to the complainant company, would you know it? 10490

A. I would.

Q. In what way?

A. Because the deductions are in such goods as we bill to the other companies—to the complainant company your question was?

Q. Yes.

A. Will you repeat that, please?

Q. If there are any deductions or rebates made by any of the vendors who sell the goods enumerated on this schedule, would you know it?

A. Yes, I would.

Q. You would know the facts in every case? 10491

A. Yes.

Q. In what way or for what reason do you say you would know it?

A. Because it would come to me in the natural course of business. Any change in price, up or down, would come right from the Auditor to me, to know why. It would be raised by the purchasing agents of the department. It goes through there.

Q. If there was a secret rebate you would not

10492 know it, or the purchasing agent would not know it, would you?

A. I do not know who is going to give it.

Q. Well, if there was, you would not know it?

A. I would because I sign most of the checks in payment of bills.

The Master: What Mr. O'Brien means is if Mr. Addicks got a secret rebate on the oil purchases, you would not know it, would you?

The Witness: I do not think he could keep it five minutes.

The Master: You do not think what?

10493 The Witness: He could not keep that secret five minutes.

Q. It is hard for him to hold things, is it?

A. I did not say that. It would be known all over the office.

Q. You make a study of temperament, don't you, Mr. Gawtry?

Mr. Ransom: I object.

The Master: You need not answer that.

Q. Do you recall at any period in the last four or five years that there was an extensive purchasing of pipe?

A. We have not laid many mains in the last four
10494 or five years, because most of the streets of New York are covered; in fact, all of the streets of New York are covered. The laying of mains in quantities has been in the outlying districts, in the Bronx and Queens. Not in any large quantities until recently.

Q. Your work in the congested part of the city is largely repair work?

A. Practically altogether.

Q. You could not revert to some period where

there was an extensive purchase of pipe, to which I might refer and ask you as to the question of seeking bids? 10495

A. Yes.

Q. When was there a large amount of pipe purchased?

A. I could not give you the year, but we made quite some extensive mileage in the Bronx, in the Northern Bronx, probably ten or twelve years ago.

Q. The Westchester Lighting Company's plant?

A. No, the Northern Union Gas Company's plant.

Q. And you purchased the pipe for them?

A. I think it was purchased through our department, as far as I can remember. 10496

Q. And were bids asked from two or three firms, or five or six?

A. Probably three or four. I do not think there are five or six people who make cast iron pipe, who deliver it in this market. The freight rates do not allow them to come here. The freight rate in Alabama is made such that it cannot come here, on account of the excess freight rate, in comparison with what the Pennsylvania people have to pay. They cannot compete.

Q. Do not the big combinations of dealers cover the whole country—Eddystone, R. D. Wood? 10497

A. Yes.

Q. You have not purchased from Wood in many years, have you?

A. Not in a few years. I will not say many, but not in a few years.

Q. The farthest back that you recall was in 1910 or 1911, when you purchased a large quantity, and you asked for bids from three or four firms?

10498 The Master: He said ten or twelve years ago.

A. Ten or twelve years ago; I cannot say exactly.

The Master: It may be 1910.

Mr. Ransom: Of course, again what Mr. O'Brien calls large or small quantities, might be wrong.

Mr. O'Brien: He says that was quite an extensive purchase.

Q. Was it, Mr. Gawtry?

A. Not very large.

Q. Do you ever purchase while the market is low
10499 for the day when the market might be higher?

A. As a rule we have not what is called speculated in prices. We have not bought thinking that the market might go up or go down. We have relied more on buying on materials to use and not to put in stock, except in emergencies, as I said before, when we think there is going to be a strike, or when the railroads are tied up, or will be, we think, for two or three months, after we have ordered, then we put in stock.

Q. You said you kept tabs on the market, using all these trade papers and other sources of information. Is the Iron Age one of those sources of
10500 information?

A. Yes.

Q. Would you call that reliable information?

A. Yes.

Q. As to the current prices of all the materials mentioned on this schedule?

A. I think the Iron Age is a very good example.

The Master: Of all the articles included in the Iron Age schedule.

Mr. O'Brien: I said included in this sched- 10501
ule.

The Master: The Iron Age does not include all the items in the schedule as Exhibit 283.

Mr. O'Brien: I think they cover practically everything.

The Master: The Iron Age does not cover paint or brick.

Mr. Ransom: Or meters.

The Master: Or meters.

The Witness: There are a lot of things in there that the Iron Age does not cover.

Q. What would be an authority on the others, 10502
the Journal of Commerce?

The Master: There are a lot of others.

A. The Journal of Commerce.

Q. And what is the organ on oil?

Mr. Ransom: I object to the question.

A. Oil, Paint & Drug Reporter.

Mr. Ransom: Do not answer the question when I object.

The Master: Let him answer it. He says the Oil, Paint & Drug Reporter.

Mr. O'Brien: Your Honor, the witness has stated that in order to make wise purchases 10503
they get in all these different sources of information.

The Master: The objection is sustained.

Mr. O'Brien: Exception.

Q. In that record you read off of the quantities of coal contracted for last year, have you included there an element of coke?

A. No.

Q. Would that estimate show the amount of coke that you depended upon for the year?

10504 A. We make our own coke, with the small amount we purchase from the Seaboard Bi-Product Coke Company of Jersey City. The coke we use is our own, made in Astoria or at 42nd Street or at 14th Street works.

Q. You did not make any there for a long time, did you?

The Master: Where?

Mr. O'Brien: Forty-second Street or 14th Street.

A. We made some there last winter.

Q. You would not say a whole lot, would you?

10505 A. Not many hundreds of thousands of tons, no.

Q. Tell me in this detail estimate or plan for the requirements of the year, how much coke did you plan to depend upon?

A. We cannot lay out at the beginning of the year, I mean of the coke year, in April or May, the amount of coke we are going to use. We cannot tell for a certain period the amount of gas we are going to sell. We only make the amount of gas that is used day by day. We store a certain amount, but that is a very small proportion. It depends on the amount of coke that we carbonize and the amount of coke that is made. Nobody can

10506 say what we are going to use in April or May or June for the next year.

Q. You know what you produced in the previous years?

A. Yes.

Q. And you can roughly estimate what it is going to be. Did that play any part in your program of April, last year, for the coming year?

A. Yes. We did not sell any coke last year.

Q. No, I am talking about the amount you used

yourself. Can you tell me how much you set down where you had your plant of contracts for coal—how much you set down for coke? 10507

A. No, I cannot remember that. Those figures are made up in the engineering department.

Q. Was there any coke set down?

A. Oh, yes, of course. We did not sell any coke but made a great deal, therefore we used it.

Q. And have been using it every day since?

A. No, because we are selling some now.

Q. You are still using coke in 111th Street.

A. Yes, but we are not using all of it.

Q. And you are using a whole lot down in 21st Street? 10508

A. Yes.

Q. And it is commingled with the coal there, is it not?

A. Yes.

Q. And does not the amount of coke that you are able to produce influence the amount of coal that you contract for for a current year?

Mr. Ransom: I object to the question as not within the scope of the cross-examination of this witness.

The Master: Objection sustained.

Mr. O'Brien: Is the objection sustained, your Honor, on the ground that it is not cross? 10509

The Master: Yes. He has been called to testify to prices, that is all.

Mr. O'Brien: Is Judge Ransom going to limit his testimony just to prices?

Mr. Ransom: Limit it to the extent to which it has been limited.

The Master: All his testimony amounts to is prices.

10510 Mr. O'Brien: I thought he was offered here to prove the economy and wisdom and reasonableness of the contracts.

Mr. Ransom: It is limited to economy of the purchases.

Q. Do you have anything to do with arranging the price which your offspring, the National Coal & Coke Company, has?

Mr. Ransom: I object to the question.

A. We do not.

Q. Do you figure out how much is to be put down in the books of account as the price for coke, or is that a matter that is determined in the engi-
10511 neering department?

A. I do not determine it.

Q. Anybody else than you determine it, in your department?

A. They do not.

Q. Are the purchases direct from the Astoria or through the National Coal & Coke Company?

Mr. Ransom: I object to the question.

The Master: I do not know what you mean by that.

Mr. O'Brien: Purchases of coke by the complainant company, are they direct from the
10512 Astoria Company or through the National Coal & Coke Company?

The Master: Do you know what Mr. O'Brien means?

The Witness: Yes. If the Consolidated Company buys coke from the Astoria we buy it direct; we do not buy it through the National Coal & Coke Company. If the Standard Company buys coke from the Astoria——

Q. You say if it does?

A. Yes, when it does. 10513

Q. When it buys it from the Astoria it buys it from the Astoria direct?

A. It does not go through the National Coal & Coke Company.

Q. Is any coke purchased by the complainant company from the National Coal & Coke Company?

A. No.

Q. Can you explain the payments made to the National Coal & Coke Company last year?

Mr. Ransom: I object to the question as not within the scope of this witness' direct examination. 10514

The Master: If he knows he can explain it.

A. What kind of payments?

Q. Payments of money.

The Master: Do you know what they were for?

The Witness: No, they do a lot of our carting.

Q. Do you know what those payments were for?

Mr. Ransom: If there were any.

The Master: If there were any.

The Witness: Except to cart coke to our building, to make fires. 10515

The Master: Are you guessing at it?

The Witness: Yes.

Q. Did you ever sign these checks? Will you say you did not know what you were signing for, or what they were paid for?

The Master: He said he did not know.

Mr. Ransom: I object to the question.

The Master: Objection sustained.

10516 Mr. O'Brien: He is an officer of this company.

Mr. Ransom: There is no evidence that there were any payments.

The Master: I will assume there were and the witness signed a check and he does not remember what they were or what the voucher called for.

Q. Are there any materials purchased by the complainant company, Mr. Gawtry, in anything like appreciable quantities, or to a large amount of money, that are not enumerated on this schedule?

10517 A. No, not that I recall.

Q. Why was not coke put on this list here?

A. Because we do not buy it to any large extent.

Q. You buy some?

The Master: The witness has answered it. Objection sustained.

Q. Can you state what the amount is that you purchased during the year 1918 from the Astoria Company?

Mr. Ransom: I object to the question. It appears that it is not applicable to this department.

10518 The Master: I will let him answer that. If they buy some coke from anybody I am going to let him state it. He has said it is a small proportion of the coke they use. What percentage of it have you bought from the Astoria Company during 1918?

The Witness: I could not tell.

By the Master:

Q. Small or large?

A. A very large quantity. 10519

Q. By that you mean not over fifteen or twenty per cent of your requirements?

A. The total fuel requirements?

Q. Yes.

A. I should not think over twenty per cent, no.

Q. Of your total coke requirements?

A. Of our total coke requirements. We buy practically all our coke from the Astoria Company.

Q. And how is that price fixed?

A. I do not know, I have nothing to do with that.

Q. That is a very substantial amount, the amount of coke you purchased from the Astoria Company, is it not? 10520

A. Yes, it runs into good figures.

Q. How is it that that was not on your schedule? It is quite an important element in the manufacture of gas, is it not?

A. I have considered that as more or less of an inter-company charge, because it is coke from our own company to ourselves.

Mr. Ransom: Those schedules show the range of prices.

The Witness: It shows the range of prices, where we are buying outside, getting competitive bids. 10521

Q. Is there anything else except the coke that you are buying from other companies?

A. Not that I recall.

Q. Have I covered the whole field with the Schedule 283 and the coke?

A. As far as I can think of, yes.

10522 By Mr. O'Brien:

Q. Do you buy many of these materials from your other companies in a pinch?

A. No.

The Master: It is quite apparent to me, Mr. O'Brien, that you do not want to finish this examination to-day. I will have to adjourn.

Mr. O'Brien: I have a number of things to ask.

The Master: I thought I could let you go to-day, Mr. Gawtry, but it is apparent I cannot do it.

10523 Mr. Hayward: We want to cross-examine this witness, too.

Adjourned to Tuesday, September 30, 1919, at 9:15 A. M.

Last Complainant's Exhibit 283.
Last Defendants' Exhibit W.

10524

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTOWN, ETC., *et al.* 10525

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, September 30, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newtown.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 10526
MR. O'BRIEN, of Counsel for defendant Swann.

LEWIS B. GAWTRY, recalled, testified as follows:

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Are we to understand, Mr. Gawtry, that the schedule presented by you showing the high and low prices does not cover inter-company dealings?

A. It may, Mr. O'Brien. Some of the goods shown on that schedule may go to other companies, or we may purchase for other companies. 10527

Q. Are there accounts kept covering the supplies purchased from other companies?

A. We do not purchase from the other companies.

The Master: They buy coke from the Astoria Company, the witness has testified.

Mr. Ransom: That is not shown in the schedule.

The Witness: That is not shown on that schedule. I am speaking of pipe and steel materials

and things of that sort, on which we advise other companies where the best price can be had.

The Master: I think what Mr. O'Brien had in mind was whether any of the articles on this schedule have relation to the purchases or sales to other companies by your company.

The Witness: None.

The Master: Is that what you have in mind, Mr. O'Brien?

Mr. O'Brien: Yes.

Q. Will you state now, Mr. Gawtry, whether you
10529 have an account or accounts in the general books of account that cover materials purchased from other companies or for other companies?

Mr. Ransom: I object to the question as not within the scope of the cross-examination of this witness.

The Master: Objection sustained.

Mr. O'Brien: May I state, your Honor, in that connection that it would hold us pretty strictly to the *quantum* of proof that was adduced through the witness, to say that I cannot ask him where a record is kept of materials, he having stated that the materials have been supplied or pur-
10530 chased for other companies.

Mr. Ransom: No, he did not say they were purchased for other companies.

Mr. O'Brien: I object to counsel testifying. I want the witness's statement, if I can get it.

The Master: No, I will sustain the objection.

Mr. O'Brien: I can see where we are going to arrive, your Honor, if we are going to put on a different witness, one who just said he looked at the purchases, and then to hold us hard and fast to each man's particular domain. We will never

get anybody on the stand to tell us the story that we ought to know.

The Master: But you cannot get that information that you ask from this witness. This witness has testified that none of the articles on this schedule are purchased by this company for other companies, except coal.

By the Master:

Q. I assume there is a record somewhere, is there not, Mr. Gawtry, of the amount of coal that is delivered to the other companies?

A. The coal is billed, as a usual thing, to the other 10532
companies.

Q. Direct?

A. Direct by the coal company.

Q. I think you have already testified to that?

A. I have.

Q. As to none of these other items is there any account which shows any dealings with the other companies, because there are not any; is not that true?

A. Not that I know of.

Q. Not that you know of?

A. Yes.

Q. As to coke, there is undoubtedly an account which shows the coke which you buy from the other 10533
companies?

A. There is.

Q. Do you know what book that is in?

A. No.

Q. Do you know anything about the accounting at all?

A. I am not acquainted with the accounting end of it at all.

The Master: There you have it, Mr. O'Brien.

By Mr. O'Brien:

10534 Lewis B. Gawtry, Cross.

Q. Are you similarly lacking in information about the works of the manufacture of gas?

A. Yes, Mr. O'Brien.

Q. That is outside of your domain, too?

A. Absolutely.

Q. You do not go to the works, then, in the course of your business?

A. Occasionally. I am not an engineer.

Q. Do you go to the works occasionally or at all?

A. Yes, occasionally.

Q. On any particular business, or just for general
10535 observation?

A. General observation and to see the supplies and talk with the superintendent.

Q. How frequently do you do that?

A. Every few months.

Q. Is it a set rule with you, or something that is just haphazard?

A. Haphazard.

Q. Are we to understand that once having made a contract for the purchase of some materials, your connection or your department's connection with the matter ceases?

A. We follow up the quality of materials by talk-
10536 ing to the superintendents, to find out whether the quality is kept up. We know the analysis of each car of coal that comes in.

Q. Where is that analysis made?

A. At our own laboratories.

Mr. Ransom: I think that has all been covered and I object to it.

The Master: I think so.

Mr. O'Brien: Your Honor, I would like to have the privilege of bringing out in my own way some of these points. You cannot avoid

overlapping something that has been covered by one of the other defendants.

The Master: He has answered that. Ask another question.

Q. Do you get written reports as to all the materials purchased?

A. As to quality you speak of?

Q. Yes, sir.

A. No.

Q. Where, if any place, do you know that tests have been made of coal and reports made to you?

A. Every cargo is tested and reports— 10538

Q. Where?

A. Tested at our own laboratories?

Q. And where are the laboratories?

A. Astoria, Long Island.

Q. Are any tests made in the plant of the complainant company?

A. Not a laboratory test.

Q. Any other kind of a test?

A. Of course, as coal is used each engineer knows the results he gets from so many tons of coal.

Q. Is there a report made to you of the result of those tests?

A. Not to me. 10539

Q. To anybody?

A. To the Engineering Department that would go.

The Master: If there is any complaint about the quality of the coal does it reach you?

The Witness: It comes to me very quickly.

Q. How often has it come?

A. Very often during the last two years. During the war the quality of the coal has not been up to the standard.

10540 Lewis B. Gawtry, Cross.

Q. Would you be surprised if I told you that Mr. Peters has stated under oath that the coal he has delivered in New York City was the best quality during the last year?

Mr. Ransom: I object to the question as incompetent.

The Master: Objection sustained. I am not interested in whether this witness would be surprised at anything or not.

Q. You purchased large quantities from Mr. Peters?

Mr. Ransom: I object to that question.

10541 The Master: That objection is sustained.

Mr. O'Brien: Exception.

Q. Have you got these written reports complaining of the quality of the coal in your files?

A. Some.

Q. Where are the others?

The Master: There are no verbal reports?

The Witness: No.

The Master: The written reports you have?

The Witness: Yes.

The Master: All of them, probably?

The Witness: As far as I know, yes.

Q. Are they under some particular designation?

10542 Have you got a file of complaints or tests, or has it got some name by which—

The Master: Where can Mr. O'Brien find them?

The Witness: You will have to go through my files and find the letters or complaints from the 23rd Street station or the 42nd Street station, and so forth.

By the Master:

Q. Have you got them indexed under "Complaints" or the station files?

A. The station files.

By Mr. O'Brien:

Q. Have you been turned over to the investigators of the defendants?

The Master: Do you know?

A. I do not know.

By the Master:

Q. Are they available?

A. I am not quite sure what you mean by "investigators of the defendants."

Q. If the defendants have any investigators and they ask for them, can they get them?

A. Yes, of course. 10544

Q. Do you know whether they have asked for them yet?

A. Not that I have heard.

By Mr. O'Brien:

Q. Have these files been turned over to any of the accountants or statisticians or other examiners of the defendants?

Mr. Ransom: I object to the question. It calls for the witness passing on something that he does not know about.

The Master: I will allow that. Have your files been turned over to anybody?

The Witness: No. 10545

The Master: Have you heard of their being requested?

The Witness: No.

Q. How were the tests carried on at Astoria of the complainant's coal?

A. A sample from each cargo was taken. That is put through the laboratory and the chemist makes the tests.

Q. Is that work of selecting the samples from each cargo assigned to some particular employee?

A. I believe it is.

Q. Don't you know?

A. I do not.

Q. Isn't the testing under your jurisdiction?

A. It is not.

Q. Well, then, you are through with the question of purchases of supplies, and you are through with the supplies when the contract is made, is that true?

The Master: Objection sustained. The witness has already covered that.

Mr. O'Brien: Exception.

Q. Is it a matter that is assigned to one man?

10547

The Master: Objection sustained; already answered.

Q. Who is the chief chemist?

A. We have no chief chemist now. Dr. Love was. He died a few weeks ago.

Q. Did he have charge of these tests at Astoria?

A. He had general charge.

Q. Who was his first assistant, if he had any? A. I can't tell you.

Q. Do you know any of the men who worked in the testing laboratory who might testify here as to the tests that have been made?

A. I don't know the names of the chemists. I don't

10548

know the chemists by name over there.

Q. Well, you have their lists, haven't you? You have that in your office, you could get it?

A. I could get it, surely.

Q. How many offices do you fill, Mr. Gawtry?

A. In the Consolidated Gas Company?

Q. In any kind of companies?

Mr. Ransom: I object to the question as immaterial.

The Master: I will allow it.

A. I am vice-president of the Consolidated Gas Company, vice-president New York & Queens Gas

Company, secretary of the Astoria Light, Heat & Power Company.

Q. Are you an officer in any other corporations or companies?

Mr. Ransom: I object to the question as immaterial.

The Master: I will allow him.

Mr. Ransom: Exception.

A. Yes.

Q. What are they?

A. Secretary of New York Edison Company.

Q. Any others? 10550

A. Trustee of the Bank for Savings of New York, and secretary.

Q. Any others?

A. Director of the Morris Plan Company.

Q. Morris Plan?

A. Morris Plan Company; director of the Peekskill Light & Railroad Company. You don't want directorships, do you?

Q. Oh, certainly, we want them all, want to know how many salaries you are drawing down, too?

The Master: Perhaps I don't want that.

Mr. O'Brien: Well, I will ask the question, nevertheless. 10551

The Master: You want to be sure, if you are trustee of some religious institution, that you don't omit that.

The Witness: I am sorry I can't qualify.

Mr. Ransom: Or any social clubs.

The Master: No, he did not ask for social clubs.

Mr. Ransom: Some of them frequently exist for business purposes.

The Master: What is the purpose of this, Mr. O'Brien.

10552 Lewis B. Gawtry, Cross.

Mr. O'Brien: Your Honor, we shall attack the salaries of all the officers of this company. There isn't an item of expense that will not be subject to our scrutiny in this case.

The Master: Do you want to know if he gets a salary from the Morris Plan Company, and the Bank for Savings?

Mr. O'Brien: Yes, how much salary, and how much time he is giving to this company.

The Master: I will let you ask how much time he is giving to this company. I won't let you
10553 ask him how much salary he gets from other companies.

Mr. O'Brien: Do I understand your Honor to rule that with respect to the affiliated gas companies?

The Master: Well, I will let you ask that.

Q. Well, then, finish, Mr. Gawtry, with the Master's permission, finish that statement you were about to make about other companies?

A. Yonkers Electric Light & Power Company, New York Edison Company, I gave, I think.

The Master: Yes, you gave that.

10554 The Witness: The Brush Electric & Illuminating Company.

The Master: You are directors of those, are you?

The Witness: Directors, yes, sir. Northern Westchester Lighting Company, Peekskill Lighting & Railroad Company; the United Electric Light & Power Company. That is all that I recall.

Q. There may be some you have not thought of?

A. I do not think so.

Q. Are you with the Williamsport Company now?

A. No.

10555

Q. How long ago did you cease connection with that company?

Mr. Ransom: I object as quite immaterial.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, this question leads up to the question of purchases.

The Master: No. What is the Williamsport Company?

The Witness: The Williamsport Gas Company. I was a director about fifteen years ago, I think.

10556

The Master: Now, let us go on. We have the ancient history on that.

Q. Now, I will ask you, Mr. Gawtry, about your salary in this company, what is it?

The Master: Which company, the Consolidated?

Mr. O'Brien: The complainant.

Mr. Ransom: I object to the question on the ground that it is immaterial and incompetent.

The Master: I will take that. What is your salary?

The Witness: $15,000.

Q. $15,000.

10557

A. Yes.

Q. Has it always been $15,000.

Mr. Ransom: I object to the question as immaterial.

The Master: How long has it been $15,000?

The Witness: A great many years. It has not been raised in some years, I am sorry to say.

Mr. Ransom: Exception.

Q. Does that mean that your services are not appreciating?

Mr. Ransom: Same objection.

The Master: Objection sustained.

10558 Lewis B. Gawtry, Cross.

Q. What salaries do you get from the other companies?

Mr. Ransom: I object to that as immaterial.

Mr. O'Brien: Affiliated?

The Witness: None.

The Master: He has answered it. He said none.

Q. Do you get a salary from the Edison Company?

Mr. Ransom: I object to the question.

The Master: When the witness says none, why repeat each company? You don't get a

10559 salary from any of those companies you referred to?

The Witness: I do not.

Mr. O'Brien: I want an answer to my question. When I asked about affiliated gas companies, I thought the witness might think that the question was confined to gas companies. Now, I am asking about the Edison and the United Electric Light Company.

The Master: You have mentioned a number of companies of which you are an officer or director. Except as you may get a director's fee for attendance, do you get a salary from any of

10560 those companies?

The Witness: No, I do not.

The Master: Any of them?

The Witness: None.

Q. Who got up this schedule? Who did the actual work of arranging this schedule?

Mr. Ransom: I object to the question as quite immaterial.

The Master: I will allow it.

The Witness: What schedule is it?

Q. The schedule of what you call the high low prices?

10561

A. It was gotten up under my supervision by the clerks of the purchasing department.

The Master: What are the names of the clerks who worked on it?

The Witness: Mr. Macklin, principally.

Q. Is Mr. Macklin in court?

A. He is.

Q. Has he been here during all of your testimony.

A. He has today.

Q. Was he here when you first were on the stand?

A. Today?

10562

Q. No, the last time you were here?

A. I am not sure. He was part of the time.

Q. He has been with the company some time, hasn't he?

A. Some years.

Q. Been in this department, in the purchasing end of it, for some years?

A. Two or three years, I should say.

Q. And he has entire charge, under you?

A. He has.

Q. Well, now, have you anywhere gathered in a schedule either in whole or in part, a schedule of the average prices paid each year for the materials listed on this schedule?

10563

A. The schedule of average prices for each article?

Q. Yes, sir.

The Master: In other words, instead of high and low, have you made up a schedule of averages for each year, for each article?

A. We showed the average of the high and the average of the low in the last column there.

The Master: For the entire year?

The Witness: For the two years.

The Master: Let me see that a moment.

10564 Lewis B. Gawtry, Cross.

Q. Well, have you gathered anywhere a list of the averages of the same materials listed on this schedule?

The Master: What do you mean? This schedule 283, consisting of two sheets, shows the highest and lowest price each year?

The Witness: Yes.

The Master: In order to strike an average you have to take an average between the high and the low?

The Witness: Yes.

10565 The Master: You have not made up a schedule on that basis, have you?

Mr. O'Brien: That would be as entirely misleading as this. What we should have if we are to get any value out of these prices is to get the weighted average for each year.

The Master: The quantity, you mean?

Mr. O'Brien: Yes.

The Master: Schedule 283 does not show that, does it?

The Witness: No.

Q. Have you got that anywhere in your files?

A. I have not.

10566 Q. Will you have it prepared?

The Master: You need not answer that.

Q. Did you have it?

A. No.

Q. Did you make it a business to make an average from year to year, or from six months to six months, of the average prices, the weighted average prices paid for these materials?

A. Not weighted average. I make studies for my own information.

Q. Did you make any kind of averages?

A. For my own information, here and there.

Q. Have you that in your files?

A. No.

Q. Will you be able on making a study to come here and testify what the average prices were for the years covered by this schedule from 1913 to 1918?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is there any reason why you are not able to testify as to these averages?

Mr. Ransom: I object to the question on the grounds already stated. 10568

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Can you give us the averages?

Mr. Ransom: I object to that. He has already answered.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you any data by which you could answer questions as to the quantities of material of the kinds specified in this schedule that were purchased in the several years set forth?

A. Quantities? 10569

Q. Yes.

A. No.

Q. Each year?

A. No.

Q. So, if I asked you beginning with anthracite coal down to gas meters, the last item on this list, you will not be able to say what were the quantities purchased?

Mr. Ransom: Do you mean all or some of them?

The Master: Any of them.

Mr. O'Brien: All of them. I want to show that the witness is here and is not prepared to testify, and he hasn't any information, that they ought to bring a man here that knows about it.

The Master: Mr. O'Brien has asked the witness whether he can now, while he is on the stand, tell him how much coal was bought in each of the respective years, how much cast-iron pipe was bought in each year, and so on down the list. Can you give us that?

The Witness: I can give how much coal.

10571 The Master: Can you give us as to anything else?

The Witness: No.

The Master: You can give the coal for each year?

The Witness: Yes.

Q. Will you give us the quantities?

The Master: Deliveries, not contracts, but deliveries.

The Witness: Yes. Beginning in the year 1913, anthracite 77,750—

Q. Is this of the complainant company?

Mr. Ransom: I have schedules showing these

10572 things by companies and by years from 1913 down, showing the prices paid and the weighted average price for the coal by years.

By the Master:

Q. And the figures you are now giving are from your original memoranda?

A. Yes, sir.

Mr. Ransom: That is put in here, "All companies anthracite." That does not mean all gas companies?

The Witness: It means the coal companies that he purchased from.

10573

Q. This one that I have in my hand is the same thing that Judge Ransom referred to. It is headed, "All companies anthracite, 1913, 1914, 1915, 1916, 1917, 1918 and 1919." In other words, it gives all of the information that Mr. O'Brien has just inquired about with reference to all the coal companies from which you bought in each of these years?

A. That and the other one is for bituminous.

Q. This is all the anthracite?

A. Yes, sir.

Q. The amount you paid, and the average price?

10574

Q. Yes, sir.

Q. And that is made up from your records?

A. It is.

Q. And you know it is correct?

A. Yes.

Q. And these are the same figures that you are about to testify to?

A. Yes.

Q. And the other record is, "All companies, bituminous"?

A. Yes.

Q. And the questions would be answered in the same way?

10575

A. Exactly.

The Master: Now, you offer those two in evidence?

Mr. Ransom: I do.

The Master: Is there any objection to receiving them?

Mr. O'Brien: The question now asked and the offer of this paper involve matters that I have a right to assume are beyond the scope of the witness's direct knowledge. They involve not only the inventories taken for each year of coal on hand, but the actual delivery and the method

10576 Lewis B. Gawtry, Cross.

of deliveries. Without knowing how that is checked up, and without knowing whether reports are made back of deliveries, I would not consent to its going in without objection.

The Master: You object to them on the grounds you have stated. I am going to receive them subject to any matters that you may bring out on cross-examination. Mark the anthracite as one exhibit and the bituminous as another exhibit.

10577 Mr. O'Brien: If your Honor please, I would like to ask a few questions before stating my objection.

By Mr. O'Brien:

Q. Are reports made back to you, Mr. Gawtry, of deliveries from day to day or week to week, from the works?

A. Week to week.

Q. They check them up and report to you directly?

A. Through the engineering department, and they make up a condensed report which comes to me showing every delivery to every company during each week.

10578 Q. The original report, then, comes to the engineering department from the works?

A. They do.

Q. Have you got the reports made to you preserved in your files?

A. I have.

Q. By the engineering department?

A. By the engineering department.

Q. Signed by some one there?

A. They are not signed; they are typewritten.

Q. Is there an O K on them from some individual?

A. They are not signed. It is a weekly report which I keep in my books, made on a regular form.

Q. That is used by you as a guide to further purchases, so you will know how the stock is being depleted?

A. Further purchases and stock is very important, very important now.

Q. Are the superintendents of the works required to send in a weekly or daily report of deliveries, or a biweekly report?

A. Daily.

Q. It is a daily report that comes in from the works of deliveries of coal?

A. To the engineering department. 10580

The Master: And they give you a summary from week to week?

The Witness: Yes, they give us a summary every week.

The Master: So that these figures can be verified by the delivery sheets at the works?

The Witness: In great detail.

Mr. O'Brien: You see, we get back to that original objection.

The Master: I understand, but I think it is the best we can do. In other words, take this testimony here, your questions to the witness illustrate the importance of having a schedule, if it 10581
can be prepared, because you were going to ask him how much he got for each company, and so on.

Mr. O'Brien: That was for the purpose not of proving deliveries or assenting to it as being proven in that way, but to determine how his averages are made up.

The Master: You would get it that way the information he is giving us on this schedule. It would be no better and no worse

10582 Lewis B. Gawtry, Cross.

Mr. O'Brien: Except that the defendants are not bound by this proof.

The Master: No, you are not bound by anything.

Mr. Ransom: This is matter for which Mr. O'Brien called at the last session, and it is prepared in pursuance of that.

The Master: I say you are not bound, I think you are.

Statement as to anthracite coal, consisting of three sheets, received in evidence and marked
10583 Complainant's Exhibit 284.

Statement relating to bituminous coal, consisting of three sheets, received in evidence and marked Complainant's Exhibit 285.

Mr. Ransom: We have several other schedules made up according to the lines that Mr. O'Brien called for, which I can produce now or later.

Mr. O'Brien: There is something written in pencil on this, I don't know whether it is meant to be car numbers or not. It is not very clear. It relates to 1915.

The Witness: That is a correction.

The Master: In lead pencil I read as follows:
10584 "1915, add, Paterson & Brown, 626 tons, $3,017.32; average price, $4.82."

The Witness: That was one cargo that was omitted.

The Master: When you checked 1915, you found that omission?

The Witness: Yes, we found it late last night.

Q. Were you working on it until last night?

A. We were.

Q. Then these are not obtainable from the books, we could not obtain a transcript from any records?

10585

Mr. Ransom: I object. We were asked to make up something aside from the books, that is what we have done.

Mr. O'Brien: I don't want the Judge's excuse, I want the witness's explanation.

The Master: Were these figures made up from any records that the defendants have access to and can check?

A. Absolutely. They can check everything we have.

Q. What book were you working on last night?

A. The contract books.

10586

Q. You have a contract book?

A. We have.

Q. That is not the same as the book of executive orders that we have here, the bills approved by the executive committee? That is another book?

A. These bills would be in that, they would go through that.

Q. There is a book called the contract book?

A. There is.

Q. And in that you keep a record of all contracts made?

A. Delivery of all materials under contract.

Q. All materials under contract?

10587

A. That is right.

Q. And is it a book that is kept one for each year?

A. I have an idea that one book runs for more than a year; I cannot say that definitely.

Q. And you have indulged in that practice for a number of years?

A. As far as I know.

Q. As far back as you remember?

A. I am not in close touch with the accounting; I am not an accountant; I wish I were, I would like to be everything.

Q. You know a few things about figures?

A. I am not sure of that. I would like to be as general as you would like to have me, but I am not.

Mr. O'Brien: Well, your Honor, of course, noted my exception to your ruling in regard to these papers. Perhaps I had better state my objection fully. I object on the ground that it is incompetent, irrelevant and immaterial, these blueprints showing or purporting to show the total payments made for coal in the different years from 1913 to 1918, inclusive.

10589 I object on the ground that they are incompetent, irrelevant and immaterial, that they are not the original records showing the delivery of the coal; that the reliability of the records leading up to these schedules made by the purchasing department has not been proven by calling witnesses here and showing the system, that the contracts have not been put in evidence; that the making of the contracts has not been proven except general statements made by the witness as to the methods by which they made these purchases; and that nobody has been called here, nor has correspondence been produced to show to

10590 just what extent an effort was made to secure the material at the lowest price, nor has any sufficient reason been shown by the witness as to purchases being made from the different individual companies from whom it appears to have been purchased.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: Gentlemen, were it not for the fact that this case had been adjourned for ten days I should have adjourned over this morning. I should have liked to have attended the funeral

of Borough President Dowling. He was a political adversary, a fine character. I do not know how many of you gentlemen knew him, but he was one of the few men in New York who was respected not only by his own political friends, but by his political adversaries. I think out of respect for him I will adjourn for one minute.

Mr. O'Brien: I might record, out of a long acquaintanceship with Borough President Frank L. Dowling, whose funeral takes place at this hour, a friendship extending over years, an opportunity to observe him in public life, the deep 10592
admiration that every city employee or attache has held for the deceased. His presidency of the Board of Aldermen won the commendation of everybody with whom he was brought into contact, friend or foe, adversary or colleague. He always bore himself in a manner that reflected the highest credit upon himself and those associated with him, as well as upon the city. His simplicity, his directness, his rugged honesty, his ever-abiding common sense as applied to public affairs, mark him as a most unusual man. If not spectacular he certainly has done a great many big things to make New York a better city, 10593
and I think his passing means a great and irreparable loss to the city and the city administration.

Mr. Ransom: I always thought that Frank Dowling was one of the squarest and the fairest men with whom we ever had to deal in this administration, a man who was absolutely unwilling to resort to any artifice or any sort of camouflage in getting at the facts. He had a capacity for following the ball, as they say in football.

Q. Is there a permanent record kept, Mr. Gawtry, of the tests made of coal?

A. There is.

10594 Lewis B. Gawtry, Cross.

Mr. Ransom: I object to that as already covered.

The Master: Yes.

Q. And that is in the laboratory, is it, at Astoria, or in our files?

A. We have a book of analyses of all coals in the general office, which I have access to frequently. Of course, the originals are probably kept in the laboratory.

Q. Is the report which comes from the works a transcript from the manufacturing book?

10595 The Master: Which report? About coal?

Mr. O'Brien: Yes.

A. Not from the manufacturing book. It comes direct from the laboratory, the chemist.

The Master: No, Mr. O'Brien means the reports from the works to the engineers, of complaints about coal that you referred to before. Would that be reflected in the manufacturing book?

The Witness: No.

The Master: Except in so far as the manufacturing book might show a deficiency in production?

10596 The Witness: Poor results, high sulphur, or something of that sort.

Q. Independently of the report showing the results of the works, is there a special report coming in about coal?

A. In all probability if the coal is bad the superintendent will call right up and have somebody go over and look at the cargo. Very often we would decline to receive certain cargoes.

Q. Do they not mix it up with coke right along?

A. No.

Q. Are you sure of that?

A. Occasionally they may do it; not always.

Q. Have you not seen piles of coal in the yards of the works, the various stations of the city, where coal and coke are mixed together? A. No, I have seen them mixed in the process of manufacturing of water gas, but I have never seen the two piles mixed.

Q. You are not sure that they do not bring coke right from the boat, without testing it, and put it in and use it?

The Master: Coke?

Mr. O'Brien: Coke, yes. 10598

A. We test our coke the same as we test our coal.

Q. Do you ever get any rebates from the companies because the coal is not up to standard?

A. Not in recent years.

Q. When did you get the last rebates for coal?

A. Some years ago.

Q. Five or ten?

A. Cents per ton?

Q. No, years.

A. I should say ten years.

The Master: Mr. O'Brien, I will not allow any further cross on this line. I think I have got your point. I do not think we will get anywhere with further cross-examination on that matter. 10599

Mr. O'Brien: There are a great many questions to be asked about this. Today is the day with this witness, you know.

The Master: I know, and I am going to let you have as complete a day as I think will do us any good. Your point is that they do not buy their coal as well as they might, do not get as good coal as they should, and so on. That means that it costs them more to make gas than you

think it ought to cost them. I do not see how it is going to help your case to bother about this line of cross-examination very much. Their records will show that it costs them X cents to make gas; your witnesses will testify that they can make gas for less; they are going to explain that it costs less to make gas because they use better coal, have better operators and better plant. But I do not see how you will get any great information from this examination.

10601 Mr. O'Brien: The way I sum up the witness's testimony so far, your Honor, is that Mr. Gawtry does not know anything about this.

The Master: That is your summation of it, and you are entitled to that.

Mr. O'Brien: I want to find out if he does know something.

The Master: This witness has been called to prove the price of materials. How this cross-examination is going to bear on that proof I cannot see. All he knows is that certain things cost a certain amount of money during certain years. The lowest price he has for any article of a certain kind was so much for a certain year. He

10602 buys a certain standard grade of coal, or is assumed to do it, and it is quite apparent that in the last few years the coal company has done very much as it pleased.

Mr. O'Brien: I am not directing my questions so much to the prices paid last year under the prices fixed by the Fuel Administration, although even there we have not covered through the witness the question of lighterage to my satisfaction and I assume not to the Court's. That 25 cents a ton and 10 cents a ton amounts to money.

The Master: Of course it does.

Mr. O'Brien: And these millions of dollars, when you pick them up, will show a profit instead of that $98,000 deficit.

The Master: And some friends of mine and yours have made a lot of money in that business.

Mr. O'Brien: If they took it out of the consumer's pocket they are not any friends of mine.

Mr. Ransom: Unfortunately, this complainant has no control over lighterage on coal that is sent to it.

Mr. O'Brien: I think myself, if I may say it, 10604
your Honor, that a company which claims to have a valuation of eighty odd millions of dollars and does the business which the complainant is doing, ought to own their own coal mines. It is a strange thing that they do not.

The Master: That is a question of business policy.

Mr. O'Brien: If they do not, they ought to control them.

The Master: The trouble is that your mind runs in the direction of socialization of national industries, and therefore you think the first step might be for the Consolidated Gas Company to 10605
own the coal mines, then for the government to take the Consolidated Gas Company; then they would own the coal mines. I do not think we have got to decide in this case whether the Gas Company might do better owning a coal mine. It might do worse.

Mr. O'Brien: Maybe we will find out that they do own a coal mine or two. When we see the directorate we have a right to almost guess they have some connection with coal mines, and the railroads that bring the coal, and the Stand-

ard Oil Company of New Jersey that sells them gas oil. Let me say right here, your Honor, how vital that is, the question of gas oil. When the company has it in the palm of its hand to boost the prices of oil, then you have to be cautious with this testimony.

Mr. Ransom: The testimony, surprisingly, shows no connection with that.

The Master: We will wait until we get to it. All I know is that the newspapers are filled with quotations of oil companies' stock and apparently
10607 no one company has a monopoly.

Mr. Ransom: Apparently there is only one man who Mr. O'Brien has so far mentioned that has anything to do with the coal industry.

Mr. O'Brien: But for a man who has been with the company such a long time, he does not seem to know much about its directorate.

Q. I am going right along, if you will come with me, Mr. Gawtry, and I will cover this ground rather rapidly. You stated something about these coal companies. Do you know of anybody connected with the directorate or the official staff of the Consolidated Gas Company, or any of its affiliated companies, who
10608 is an officer or stockholder in any of the coal companies named on these exhibits? A. An officer or stockholder of any of those companies named on the exhibits?

The Master: Make sure, now.

Q. Open up your mind and do a lot of thinking.

Mr. Ransom: I object to these comments.

A. Shall I answer?

The Master: Yes.

The Witness: Mr. George F. Baker is a director of the Lehigh and Wilkesbarre Coal Com-

10609

pany and the Philadelphia & Reading Coal & Iron Company.

The Master: Do you know whether he is a stockholder of those companies?

The Witness: I do not.

The Master: I think we had that covered once before, did we not?

Mr. O'Brien: We got close to it, your Honor, but I want to get a definite statement.

Q. Do you know of anybody else being connected with the coal companies or with the railroads that handle this coal? A. I do not.

10610

Q. Have you any reason to believe that Mr. Brady or Mr. Rockefeller or any of the other men that you have mentioned in connection with the directorate of the complainant company owns or controls either the coal companies that are mentioned in these exhibits or the railroad companies that handle their coal? A. I have every reason to believe they do not. They are not directors, they are not officers. What stock they own in the different railroads I have not the slightest idea.

Q. Then your answer would exclude the holding of stock; you are not clear on that? A. I do not know what stock any of our directors hold. As a rule they do not publish that.

10611

Q. Well now, does your giving of advice as to purchases of coal extend also to the electric light companies, the Edison and the United Electric Light & Power?

Mr. Ransom: I object to the question as immaterial.

The Master: I will take it.

The Witness: I advise with them, yes.

Q. And they follow your advice?

A. Not necessarily.

10612 Lewis B. Gawtry, Cross.

Q. Do they generally make purchases at about the same time and from the same people? A. Not from the same people. They buy a different kind of coal entirely. They buy a steam coal, a low volatile bituminous coal; we buy—our gas coal is a high volatile bituminous coal.

Q. And from whom do they buy, generally?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, this has a very great bearing on this case, it deals with purchases,
10613 and the witness has brought out in his direct testimony his part in these affiliated companies.

The Master: How will the particulars of the person from whom the coal is purchased by the New York Edison Company in any way—in any possible way affect the price of coal used by the Consolidated? I can't see.

Mr. O'Brien: It appears from public records that these electric light companies are making a lot of money, they show a great profit, they are owned by the complainant company, and while in the Municipal Gas Company case, while the Court of Appeals ruled as to that case and under
10614 the conditions in that case, that the company could not be expected to recoup any losses in the gas-making industry from profits in the electric light industry, that does not govern here.

The Master: And conversely, you can't expect the Consolidated Gas Company to sell gas at a loss because they make some money out of their electric light business.

Mr. O'Brien: I was going to say, your Honor, that that is going to be an inquiry in this case.

The Master: Well then, let us get to that inquiry, but I do not see how that helps us any.

Mr. O'Brien: I want to know about the purchases made by the New York Edison Company, if the witness has anything to do with them.

The Master: Objection sustained. Next question.

Mr. O'Brien: Exception. Perhaps I had better put that in the form of a question.

The Master: You did put that in the form of a question. You asked him what companies and what prices they paid for their coal, and I have ruled out that question.

Q. Do you make the purchases for the Edison 10616
Company, of coal?

The Master: Objection sustained, already answered.

Mr. O'Brien: Exception.

Q. Do you make the purchases for the Edison Company of any of the materials shown on the schedule here of high and low prices?

The Master: Objection sustained, already answered.

Mr. O'Brien: Exception.

Q. The same questions as to the United Electric Light & Power Company?

The Master: Same ruling. 10617

Mr. O'Brien: Exception.

Q. Before you close your contracts for coal, are you in possession of information as to the prices paid by the affiliated companies for coal to the same companies from whom you buy?

The Master: Objection sustained, already covered.

Mr. O'Brien: Exception.

Q. Is there a working arrangement between the purchasing department of the complainant company and the various affiliated companies, gas and electric

10618 Lewis B. Gawtry, Cross.

light and power, by which they make common purchases of the dealers from whom they buy all their materials, or any of them?

Mr. Ransom: I object to that question as fully covered.

The Master: Objection sustained.

Q. Is there a discount given or a lower price given or any consideration given to the complainant by the people from whom they make these purchases of coal and other materials for the fact that they are selling at the same time to the affiliated companies any or
10619 all of those materials?

The Master: You may answer that.

The Witness: Not one cent.

Q. If representations were made—coming now to your practice in purchasing—if representations were made to the Lehigh and Wilkesbarre Coal Company, or Williams & Peters or the Lehigh Valley Coal Sales Company or any of those other companies, that you could control an immense purchase of coal in New York City, would not that make some difference in the price of those materials?

A. I do not think so.

The Master: It did not to you?

10620 The Witness: It did not.

Q. Have you ever tried to use that leverage or that weapon on that argument for the securing of a lower price for coal or other material?

The Master: I will allow it.

The Witness: I have not.

Q. Have you ever sought to buy any kind of material in bulk for all of the affiliated companies, in order to get a lower price for the materials?

A. We do that in certain materials that have been described, such as pipe and so forth. We buy in larger quantities and allow these affiliated gas companies to have the advantage of that contract.

The Master: That is so as to coal too, isn't it?

The Witness: That is so as to coal too, but Mr. O'Brien said all companies. I refer to electric companies. We never include any electric companies at all, because we do not buy and purchase the same goods at all—a different kind of coal and different materials.

Q. Have there been contracts made, written contracts, governing the years 1913 to 1918, for all of these purchases of coal, or most of them?

A. Most of them, except when the price was made by the United States Fuel Administration, there were 10622
no contracts made, practically.

Q. Prior to that time it is all covered by the contract?

A. Yes.

Q. The contracts you have on file?

A. I have.

Q. And those contracts, were they negotiated directly by you or by someone connected with the company?

A. By me.

Q. Do the executive committee ever enter into that part of the business?

A. I make recommendations to the executive com- 10623
mittee, through the president.

Q. Well, do they ever make recommendations to you?

A. Oh, they advise me as to the market and the question whether it is a good time to purchase, whether the next six months of the year prices will be higher or lower.

Q. Then tell you to buy from certain companies?

A. Never.

Q. They suggest it?

A. I have never had a suggestion.

Q. Written or oral?

A. Written or oral.

Q. Do they ever whisper anything to you?

A. They have not, or no member of the executive committee, or no officer of the company, or any company.

Q. Well, how much time do you devote to this business?

A. All of my time.

Q. Well, you don't mean that?

A. Do you mean coal business?

10625 Q. No, but to the purchasing of the complainant company?

A. I devote all of my time to Consolidated Gas Company.

Q. Is there any part of your salary apportioned to the Astoria Gas Company's expenses?

A. There is not.

Q. Is there any portion of your salary allocated to or apportioned to the expenses of any of the affiliated companies? A. There is not.

Q. It is all charged up to the complainant company?

A. It is.

10626 Q. And the time you may spend in Astoria and the Edison Company's business or any other business connected with the affiliated companies, is all counted in on your one salary, and it is charged up to the complainant company?

A. The time spent with those other companies is merely in an advisory capacity, as it were.

Q. Well, it is time, and you give them something, don't you?

A. I try to.

Q. You are purchasing—you dominate the purchasing for them?

A. Far from it, no.

Q. Oh, they don't follow your advice?

A. We do the gas companies, not the electric companies.

Q. Well, take the gas companies first, you direct them on purchases, don't you?

A. Yes.

Q. You give some time to them?

A. Yes.

Q. You give them the benefit of your accumulated experience?

A. I do.

Q. And there is no charge made to them for that? 10628

A. Not that I know of.

Q. Well, now, you give some time to the Edison Company?

A. Some time. I am a director of the Edison Company.

Q. What?

A. I am a director of the Edison Company.

Q. Outside of your directorate, you give some attention to their business?

A. Yes.

Q. You are a factor in their business, aren't you?

A. A very small one.

Q. Well, you are modest about it, aren't you? 10629
That comes from your modesty, doesn't it?

A. I do not think so.

Q. You give some time to the United Electric Light, Heat and Power Company?

A. Yes.

Q. Do you keep tabs on that in any way?

The Master: The amount of time?

The Witness: As to the time, no.

Q. It is all in the system, I suppose that is the way you figure it?

A. It is all in our lighting business, the Consolidated Gas Company.

Q. Well, now, do you mean—tell me about the tests that are made of other materials, if you have an organized system of testing the materials purchased?

A. We do not test all materials. The engineering department make certain tests on certain materials that they receive—cement and things of that sort which go through the laboratory, as the engineer in charge may see fit.

Q. That laboratory is at Astoria too?

A. Astoria.

Q. What engineers have charge of that, the staff
10631 over there? A. Yes.

Q. Jenkins and Sperling, and the rest?

A. Joacim and Sperling. They are all engineers. They may not have charge of the laboratory. They are engineers of the Astoria Company.

Q. Well, has the complainant company any department in the city where they test?

A. No.

Q. Do you carry on directly the purchases of appliances, or is there some individual that covers that particular branch of the work?

A. It is all done through the purchasing department.

10632 Q. Well, is there some one man that we could look to as the real expert on appliances?

A. There are certain recommendations made by the engineer of utilization on the appliance we will use, what appliances are to be purchased, and we secure bids, and those are presented to the executive committee with my recommendation.

Q. Well, you are a rubber stamp, so far as that goes?

A. I am not.

Q. Do you know the difference between a Vulcan and a Peerless appliance?

A. I do.

Q. Let me ask you, what do you pay for a Peerless gas range?

A. I can't tell you. They make a great many different kinds.

Q. What do you pay for the one that rents for $8?

A. I don't know offhand.

The Master: Who makes these appliances?

The Witness: They are made by different people.

Q. What companies do you purchase from? 10634

A. The Peerless is made from our own design, still designed by us, and we have it made by different people throughout the country; the Vulcan is made by the William M. Crane Company, Jersey City.

Q. Well, name the gas range people or appliance people where you purchase these from? A. The American Stove Company, the Clarke Company of Chicago, William M. Crane Company. I have got a list I can read.

Q. Oh, I just want to get your memory. We will just find out how much you are in touch with these details. Those are all that you remember?

A. Those are the largest ones. 10635

Q. Well, give any that you remember, large or small?

A. Crane and Clark—I should prefer to see my list, if I can check myself up.

Q. I don't want you to refer to your list.

The Master: If you do not recall any more, that is enough.

Mr. Ransom: Well, he can refresh his recollection.

The Master: It is not important enough.

Mr. O'Brien: I am trying to test his recollection.

The Master: It is not important enough.

Q. Does your purchasing go into the question of repairs at all of appliances?

A. The purchasing, no.

Q. Doesn't your work border on that work at all?

A. It does.

Q. Do you purchase the various materials that are used in the repair of meters and of appliances?

A. No.

10637 Q. The parts—do you purchase them?

A. No.

Q. Who purchases them?

A. The Standard Gas Light Company of New York.

Q. All of them?

A. Yes, they run the repair shop.

Q. Don't you make any purchases for that repair shop at 156th Street?

A. No. 156th Street? 111th Street you mean.

Q. No, I mean up on the Heights, in that shop there?

A. Oh, that is not the Standard, that is a small shop

10638 of our own.

Q. That is what I mean. Do you make the purchases for the repairs there?

A. We do.

Q. Do you purchase the parts that are used there?

A. We do.

Q. From whom?

A. Well, whatever materials they are, from all sorts of people, twenty or thirty different people, I suppose.

Q. Well, do they repair appliances there?

A. Yes, but a very small part; it is infinitesimal to the whole.

Q. Do they repair meters there?

A. They do not.

Q. Does the complainant company do any of the repairs of meters?

A. They do not.

Q. That is all let out to the Standard Company, is it?

A. Right.

Q. Does the Standard Company—is every employee in the building of the Standard Company at 111th Street—is every workman there an employee of the Standard Company? 10640

Mr. Ransom: I object to the question, hardly within this witness's examination.

The Master: I will allow it.

Mr. Ransom: Exception.

The Witness: In the 111th Street building?

Q. Yes.

A. No, there are a great many Consolidated Gas men in that building.

Q. There are?

A Yes.

Q. Working there?

A. Working there.

Q. On the pay roll of the Consolidated Gas Company? 10641

A. Yes. We have a meter shop there.

Q. Then it is a fact that you have the repair of meters there?

A. We do not repair meters there. This is on a different floor. We have a great many Consolidated men in the meter shops, not in the meter repair shops.

Q. In your own meter repair shop—

The Master: What is the distinction between meter shop and repair shop?

The Witness: Meter shop, the meter shop sets the meters and give attention to the repairs and

leaks on the district, and the Standard Gas Light Company repairs meters and repairs supplies, entirely different business.

The Master: When you talk of a meter shop, you talk of a shop where the meters are set and removed?

The Witness: Where meters are set.

The Master: And when we talk of a meter repair shop, we talk of a place where meters are repaired?

The Witness: Where they are opened up and
10643 new diaphragms put in, and repairs made.

Q. Do you know what floor the meter shop is on there?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Do you know who is in charge of the meter shop there?

The Master: The meter shop or meter repair shop?

Mr. O'Brien: Meter shop.

The Witness: Do I? Mr. Bridgeworth.

Q. Well, Mr. Cornine and Mr. Kelly, they are not employees of the Consolidated Gas Company?

10644 A. They are not.

Q. Now, Mr. Gawtry, your answer to my question relative to tests being made of other materials was that the engineer department made their own tests. Can you tell me now whether there is any system of testing materials by which a certain routine is gone through and there comes back to you a report that you rely upon in your dealings with the companies that sell supplies to the company?

A. A report would not come back to me unless the material is unsatisfactory, then it would.

Q. In the absence of a report making complaint against it, you then assume that everything is O K?

A. I do.

10645

Q. Well, you take the engineer's judgment on the purchases of mains and pipes, I suppose, or do you rely upon your own?

A. On the purchase of cast iron pipe, we have an inspector, professional inspector at the foundry, who tests each piece of pipe before it is shipped to us, our own inspector.

Q. He is on the pay roll of the complainant company?

A. He is.

Q. Who is he?

A. We hire different men for different jobs, different pipe. We have not purchased any pipe recently, you know, cast iron pipe I am speaking of. 10646

Q. Well, do you let that out to some contracting firm like—

A. It is a firm, who does it, Holden.

Q. Who makes a business of testing iron and steel?

A. Yes.

Q. You get their reports?

A. Get their reports.

Q. Do you keep them on file?

A. Yes, they are kept on file.

Q. And they are available to the defendants?

A. Yes, they are. 10647

Q. Well, no one suggested to you to produce them when you got on the stand?

A. No.

Q. Was it suggested to you that you might be asked about the tests of these materials?

A. No. We have got those reports on file; they can be had at any time, Mr. O'Brien.

Q. Well, in making a decision as between competitive bidders, do you rely upon the engineer's judgment, or do you seek it?

A. We do seek it, yes.

10648 Lewis B. Gawtry, Cross.

Q. Is that oral, too?

A. As a rule. We do not write letters from one room to another all the time, Mr. O'Brien.

Q. Well, in some matters you write letters?

The Master: He leaves that to Judge Ransom.

Q. Your relations with other companies and other departments is formal, when you want it to be, isn't it?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Q. Well, now, what I want to know, Mr. Gawtry,
10649 is how far you depend upon the engineer's judgment, either Mr. Woods or Mr. Cullen Morris or any other head or engineer in that department as to the purchase of materials that are used by other departments?

A. It depends tremendously upon their judgment. They are the trained engineers of the company, they have got knowledge after years of experience which other men have not got in the company, and we rely upon them almost absolutely.

Q. You take their judgment then as to the firm from whom you are going to buy pipe?

A. We know more about that than they do.

Q. You know more than they do?

10650 A. We know more about that than they do.

Q. You know more than they do?

A. We know more about the price. They know more about the quality, and we know more about the financial standing, the shipments, the status in the markets, and that sort of thing. We make that a study and they do not. We each have our own lines, Mr. O'Brien.

Q. You mean they don't get at the price. Each man is kept in his own cubbyhole in the Consolidated Gas Company, is that it?

The Master: You need not answer that question.

Q. Well, does your engineer's judgment prevail or yours on the question of purchasing pipe?

The Master: Well, what part of the question, Mr. O'Brien? That is a pretty broad matter. As I understand the witness's answer, the engineers say that they want a particular kind of pipe that will test in a certain fashion, and that you take as the basis for finding out what it will cost, and get it as cheaply as you can.

The Witness: We do.

The Master: You do not pick the kind of pipe that they ought to use? 10652

The Witness: No.

The Master: They pick the kind of pipe they ought to have?

The Witness: Yes.

The Master: You pick the place you purchase it, the place at which it ought to be bought, and the price at which it ought to be bought and paid for?

The Witness: Right.

The Master: I think that is perfectly clear, what this witness means.

Q. Will you tell me, Mr. Gawtry, why you don't purchase the oil? 10653

Mr. Ransom: I object to it.

The Master: I think he has answered that. But I will let him answer it again.

The Witness: Mr. O'Brien, our Mr. Addicks has done that for a great many years.

Q. Well, why does Mr. Addicks buy the oil, and not you?

A. He is better posted. I have never done it, never studied it.

Q. Well, you made a pretty good purchase of oil, didn't you, when you got it for $3.37?

A. I never purchased a gallon of gas making oil.

Q. You did not make a contract for oil for the Williamsport Company at $3.37, when the complainant company was paying a whole lot more?

A. No.

Mr. Ransom: I object to the question.

Q. You say no, do you?

A. I say no, never made any purchase for the Williamsport Gas Company.

Q. Well, is there any other class of materials or any other kind of materials purchased by someone else connected with the complainant company because they
10655 are better posted than you are?

A. No, nothing except oil. Oil is the only thing.

Q. Who makes the purchases for construction?

Mr. Ransom: That has all been gone over.

Q. Bricks, cement, steel.

Mr. Ransom: Does he mean when the company is doing the work, or when a contractor is doing the work?

Mr. O'Brien: I don't want Judge Ransom's testimony. I don't want you to butt in here when I am getting the witness to answer some simple question and give him the answer. I want his answer, not yours.

10656 Mr. Ransom: I object to the question on the ground that it is not specific or intelligent.

The Master: I will allow it.

Mr. Ransom: Exception.

A. We, through our purchasing department, purchase such articles needed for our own construction.

The Master: How about when you put up a new building and contract it out to the Fuller Company, or somebody else?

The Witness: We do not purchase.

Q. Is there some individual under you that is a specialist in the purchase of brick and cement and steel and other building material?

A. Yes, the purchasing agent.

Q. Who is he?

A. Mr. Macklin.

Q. Have you purchased any gas holders in the last seven or eight years?

A. No.

Mr. Ransom: I am afraid they are not in the category of what is purchased.

The Master: There is a clear distinction, is there not, Mr. Gawtry, between purchasing material and making contracts for the construction of buildings, gas holders and things of that kind?

The Witness: Oh, absolutely. 10658

Q. When was the last holder built, Mr. Gawtry?

The Master: Objection sustained.

Q. Was there a gas holder erected during the period covered by your exhibits 1913 to 1918?

A. I am not sure.

The Master: What is your point, Mr. O'Brien? If they built a gas holder with material they purchased themselves?

Mr. O'Brien: Yes, sir.

The Master: Do you know of any gas holder that your company built with their own engineers, with material that they purchased?

The Witness: We have not. We contract for 10659 them.

The Master: Is there any construction that you have conducted by your own company, with its own construction force and its engineers, where you bought the brick and steel, et cetera?

The Witness: Practically not; it is chiefly repairs.

Q. Did you buy any of the material that entered into the construction on the Astoria Company?

A. I did not.

Q. Did you have anything to do with the competitive bidding in connection with that plant?

A. I did not.

Q. Have you had anything to do, or do you conduct purchases of any kind of material for the Astoria Company?

Mr. Ransom: That has already been answered a number of times.

The Master: I think that is covered.

Mr. O'Brien: I know he spoke about advising them.

The Master: He has given it. He buys coal for that company, he buys pipe for that company don't you?

The Witness: Yes.

Q. And the prices, are they less or more than these prices?

The Master: That is fully covered. Objection sustained.

Mr. O'Brien: Exception.

Q. Can you give us the quantities of material on which you sought competitive bidding?

The Master: What kind of material?

Q. Building material, in the last three or four years

A. Oh, we can compile that.

Q. I didn't ask you what you can compile. I want to get your own views about this. Can't you give us the price of lumber in the last three or four years?

Mr. Ransom: You mean here and now?

Q. The last three years, I said.

The Master: While you are on the stand can you do it?

The Witness: Not offhand.

Q. Can you tell us the price of gas holder paint in the last year?

A. Not offhand.

Q. Can you give us the price of red lead?

A. Not offhand.

Q. Iron oxide?

The Master: Your question relates to every item on Schedule 283, does it?

Mr. O'Brien: Yes.

The Master: You can't tell us without referring to the schedule what the prices were?

The Witness: I do not carry them in my head.

Q. Iron bars?

The Master: Objection sustained. I have already covered it by my question. 10664

Q. Is there any exception, any one exception on the whole list?

The Master: The witness has said he does not carry these prices in his head at all, and does not know any of them offhand.

Q. Have you gone to the coal mines or the breakers to see the coal produced which is sold by the company?

Mr. Ransom: I object.

The Master: Objection sustained. It has been answered before; the witness said he had been to the coal mines himself.

Q. Do you make a business of doing that at stated intervals? 10665

Mr. Ransom: It has all been gone over.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Are the gas meters purchased by written contract?

A. We have written quotations and written orders are given for them, yes.

Q. You ask for bids or prices or quotations, and they send you a letter and tell you what they are?

A. Yes, sir.

Q. Do those letters show the discounts?

A. They do.

Q. And you write and accept a quotation, do you?

A. If we purchase, yes.

Q. Give them an order?

A. Yes, sir.

Q. And you have those on file?

A. Yes, sir.

Q. Are the discounts all figured in the bill?

A. They are. It is the list price with 15 per cent off or 20 per cent off, or whatever it may be.

10667 Q. Are any officers of the complainant company officers or stockholders of the meter companies?

A. Not officers. I do not know about stockholders. None are officers or directors.

Q. What you are saying is that no officer of the complainant company is an officer of a meter company?

A. That is right.

Q. You are not saying anything more than that?

A. I do not know about stockholders.

Q. You do not know whether they hold stock in these companies?

A. I do not.

10668 By the Master:

Q. Do you own any stock in these coal companies?

A. Not one penny's worth.

Q. In the coal carriers?

A. Not one penny's worth.

Q. Or any of the companies that you are buying any of this material from?

A. Not a penny's worth.

By Mr. O'Brien:

Q. Are gas meters purchased in large quantities, Mr. Gawtry?

A. At times they are. Not recently. There has been no building and no demand for a large number

of meters. Our purchases have been very small in the last few years. If building increases and new houses are put up or new apartments are put up the meter business increases.

Q. Then as to meters and mains and building material, iron and steel, the purchases in the last three or four years have been quite small?

A. Quite moderate.

Q. Comparatively very small? A. We have not had the—

Q. (Interposing.) Compared with previous years?

A. We have not had the building, as I explained. 10670

The Master: But they are small?

The Witness: They are small.

Mr. Ransom: And our expenses are much below normal in those respects.

The Master: The big question is how much oil, coal, and material goes into the making of gas, and how much does it cost to distribute it?

Mr. Ransom: There are other expenses.

The Master: Of course, there are; but the big question is, how much does it take to make a thousand feet of gas.

Mr. Ransom: The basic question is the manufacture and distribution. 10671

Q. Do you buy all your meters from the American Meter Company?

A. We do not.

Q. Most of them?

A. Yes.

Q. Ninety per cent of them?

A. I should think so.

Q. Why?

A. Because they are the manufacturers of 90 or 95 per cent of the meters of the country. There are only one or two small companies that make two or

three thousand meters a year, outside of the American Meter Company.

Q. Any other reason?

A. None.

Q. Does your purchasing department work take you into the construction work at all—the matter of contracts made for the construction of buildings?

A. No.

Q. Did you have anything to do with the office building construction?

A. Absolutely nothing.

10673 Q. Did you have anything to do with the equipment that went into it, the purchase of desks and files?

A. Yes, certain supplies—small supplies.

Q. Mr. Gawtry, do you have anything to do with the sales of the departments of materials or residuals?

A. Nothing.

Q. Who has charge of that?

A. You mean tar, ammonia, and things of that kind?

Q. Yes.

A. Mr. Addicks.

Q. He takes care of that, too?

A. He does.

10674 Q. Any special reason for that?

A. Except that he is better posted than anybody.

Q. And can get better results than you could?

A. He is an engineer of a great many years' standing. I am not an engineer.

Q. Did you not learn the gasmaking business when you started?

A. I did not.

Q. You do not pretend to know anything about the manufacture of gas?

A. A very superficial knowledge, Mr. O'Brien. I could not qualify as an engineer.

Q. How about accountancy?

Mr. Ransom: I object to it. The question is inconsequential and a pure waste of time.

The Master: Objection sustained.

Q. Do you check up the bills in any way, or the vouchers, for the purchases of oil?

The Master: I think that has been fully covered.

Mr. Ransom: Yes, sir.

The Master: Objection sustained.

Mr. O'Brien: That part of it I am not so sure of, your Honor. I want to find out about 10676
a particular payment made to the Standard Oil Company of New Jersey.

The Master: Ask him about a particular payment and see if he knows anything about it.

Q. On page 96 of the treasurer's book, Mr. Gawtry, there is a payment of $295,985 to the New Jersey Standard Oil Company. That was along in April of 1918. Do you know whether that was for 1917 oil?

A. I do not. I have not the slightest idea.

Q. Do you know when payments are made for materials?

A. We pay for all of our materials purchased within thirty days. That is the general rule. 10677

The Master: Including oil?

The Witness: Yes, twenty or thirty days.

Q. You do not know that positively? You would not want to guarantee that?

A. I could not guarantee that, no. There may be delays on certain bills or vouchers.

The Master: That is not in your department, is it?

The Witness: No, not at all. That is divided up, you see, in a large company.

Q. I wanted to ask you about the coke end of it. Who specifies the price at which you make your entries in the books for coke?

Mr. Ransom: I object to the question. Mr. O'Brien keeps coming back to these things time after time, after they have been covered. I cannot understand the reason for his evident desire to delay.

The Master: It is not evidence of a desire to delay; it is evidence of a desire to be sure that he has covered some points.

10679 Mr. Ransom: It is evidence of a failure to read the record.

The Master: I do not think you ought to charge counsel with trying to delay. I understood that this coke is an intercompany matter that you did not have to do with?

The Witness: I have nothing to do with it at all.

The Master: The objection, then, is sustained.

Q. Not even in a formal way?

The Master: Are you a member of the executive committee?

The Witness: Of the Consolidated? I am not, no.

10680 Q. In other words, do you have anything to do with this coke question at all?

The Witness: I have something to do with the sale of coke outside, when we do sell it, but not for a year or more.

Q. You have something to do with the sale of it?

A. Yes, when we sell it outside, to the public.

The Master: But he said he has not had anything to do with it for a year or more.

Q. Do you regulate that price?

A. No, I do not.

Q. You have been selling it lately, have you not?

The Master: Who has to do with it, the price?

The Witness: Mr. Doane.

By the Master:

Q. That is the National Coal & Coke Company?

A. Yes. That depends on the price of anthracite.

Q. What do you have to do with it when you do sell it—as an officer of the National Coal & Coke Company?

A. As an officer of the National Coal & Coke Company.

Q. You are an officer, are you? 10682

A. I am a vice president. I do not think I mentioned that in the list.

Q. That is what made me ask you. I do not think you did.

A. Yes; I would like to add that.

Q. The statement appears now that you are a vice president. Are you a director?

A. Yes, I am a director.

By Mr. O'Brien:

Q. Do you draw a salary from that?

A. No.

The Master: But you do not undertake to fix the price of coke, at which it is sold to the public? 10683

The Witness: No, sir.

Q. Did you at any time fix the price of coke?

A. No.

The Master: Do I understand this coke is manufactured only by the Astoria Company?

The Witness: The Astoria Company, 14th Street station and 42nd Street station.

Mr. O'Brien: You are talking about the dead past now.

By the Master:

Q. Some of that coke is used by the Consolidated, is it?

A. Some of that is used by the Consolidated.

Q. And then you pay the company; for instance, the Astoria Company?

A. We buy it from the Astoria.

Q. How does the National Coal & Coke Company get it?

A. They buy it from the Astoria and sell it to the public—a retail business.

Q. The National Coal & Coke Company is sort of an intermediary between the companies and the public in the sale of coke?

10685 A. It is a cartage concern. They have horses and wagons and take the coke and deliver it.

Q. And that stock, I believe, is owned by the Consolidated Gas Company?

A. Every share of it.

Q. So it is practically used by the Consolidated as a means of selling coke to the public?

A. That is right.

Q. The National Coal & Coke Company is charged with this coke, is it?

A. Yes, sir.

Q. Who fixes the price they pay for it?

A. I think that is done by the engineering depart-

10686 ment. I am not sure.

Q. You do not have anything to do with that?

A. I do not have anything to do with that, no.

Q. And in selling the article Mr. Doane of the National Coal & Coke Company has charge of it?

A. He has the direct charge of it.

Q. He represents the Consolidated Gas in running that company?

A. Yes, he is the head of that company; he is the active man.

Mr. Ransom: The price automatically readjusts itself.

Mr. O'Brien: I do not want that kind of testimony going on the record, your Honor.

The Master: What kind?

Mr. O'Brien: Judge Ransom's statement that the price automatically readjusts itself.

The Master: It means nothing.

Mr. O'Brien: The pages are going to talk to somebody some day, the pages in this case, and I do not want his testimony in there.

The Master: Anybody who listens to any statement of that kind is perfectly stupid about it, because it is not a statement that has any weight. 10688
The fact that counsel makes a statement does not prove anything.

Mr. Ransom: My statements are as inconsequential as Mr. O'Brien's.

By Mr. O'Brien:

Q. Do you know anything about these averages on these blueprints showing prices paid for coal in bulk—aggregate prices (handing witness blueprint)?

A. I do.

Q. How are they secured. Take that first sheet there. I call your attention to Complainant's Exhibit 284, Mr. Gawtry, particular the first line, the first item under the year 1913, purporting to cover purchases 10689
made of the Lehigh & Wilkebarre Coal Company, tonnage 38,910, under the title "Cost," $179,837.85, price 4.6218. Will you tell me how that price was figured out?

A. So many tons of coal cost so much money; divide one by the other, and you get the price.

Q. Do you know or can you swear that that $179,000 was an actual expenditure within the twelve months of 1913?

A. It was.

Q. Will you swear that it does not cover some

coal which was purchased prior to 1913 and used in 1913?

A. I do, because it is taken from the vouchers.

Q. Which is it? Some coal purchased the year before always remains over, does it not?

A. This is coal actually received by us and paid for during that year.

Q. Irrespective of when it was used?

The Master: It has nothing to do with your inventory?

The Witness: We might put the coal in stock
10691 and hold it for six months. It may be at the bottom of a pile; it may be there six or eight months. That individual ton of coal might not be used for a long time, but that was taken in with our assets of coal.

Q. But that has not anything to do with this?

A. This is a coal that was purchased, but whether it was used that year, that individual ton of coal, I cannot tell.

Q. You cannot tell?

A. No.

Q. Does this actually represent the sum total of the vouchers, that $179,837?

10692 A. Yes, purchased from that company during the year.

Q. During the twelve months of 1913?

A. Right.

Q. And the same you would say as to the same items under the years 1914, 1915, 1916, 1917 and 1918?

A. Right.

Q. And the purchases here set forth for 1918, or the amount, $262,087.31, covering this same coal company for the year 1918, represents the sum total of the vouchers or payments to that company within the twelve months?

A. Right.

Q. It is taken from the vouchers showing the payments, isn't it?

A. The vouchers of coal received and paid for at that amount.

Q. Which is it?

The Master: What do you mean, which is it?

Mr. O'Brien: I do not know; it might be the sum total of deliveries at a certain price or the sum total of the payments actually made.

A. It is the coal received and paid for during the year 1918. 10694

By the Master:

Q. In other words, if you got some coal the 29th of December and the bill was not paid until the 19th of the following January, it would be a payment in 1918, of coal delivered in 1918, would it?

A. It would not come in there.

Q. It would not come in there?

Mr. Ransom: It would come in 1917.

A. It would come in 1917; it is 1917 coal.

Q. I mean the bill paid in January would be applicable to the prior month, would it not?

A. The prior month.

Q. That is what I meant. 10695

A. Yes, that is right.

Q. I probably got my dates mixed. Take the year 1918.

A. Yes.

Q. You paid a bill in January for coal delivered in September, 1917?

A. Yes, right.

Q. That payment which you made in January, 1918, is not included in the 1918 figures here?

A. It is not.

Q. It is included in the 1917?

A. 1917, when the coal is delivered.

Q. In the same fashion, taking coal delivered as late as the end of December, 1918, but the bill paid in January, 1919, that bill would reflect in the 1918 figures?

A. Right.

Q. Do you know those bills were gathered together and that computation was made that way?

A. They were.

Q. Did you do that yourself?

A. Not every bill.

10697 Q. Did you see Macklin do it?

A. Oh, we had ten or a dozen clerks working at this, Mr. O'Brien.

Q. Did you give them instructions to go into 1918, and find any bills that were paid in 1918, for deliveries of 1917, and charge them all up to 1917?

A. No, we only took 1917. The price was the same, it would not make any difference. We only took the 1918 deliveries.

Mr. O'Brien: Maybe I can set this at rest if Judge Ransom will state that these exhibits that have been offered since the witness has been on the stand are only for the purpose of showing

10698 ranges of prices, and not to show deliveries within given periods.

Mr. Ransom: These are made up in accordance with what you requested, as I understood it. They are designed to show coal received from each of these companies in each of these years, the cost of that coal to the complainant company, whenever that cost was paid, and in the first place the average price for that tonnage during that year to each of these companies the weighted average in each year for the coal, anthracite and bituminous, received by the complainant company

from all the companies from which they purchased coal.

The Master: I think there is another complete answer to it. The books received in evidence are supposed to show the amount of coal received during the year. I do not believe that these tabulations necessarily are offered as proof of that same fact.

Mr. O'Brien: I just wanted to know that your Honor did not receive them as proofs of deliveries, but rather as showing ranges of prices.

The Master: I take it that that is a tabulation 10700
based upon other records of the company, and assuming that the other records of the company show the receipt of so much coal, that this is a computation made upon that basis. See if I am right about that.

By the Master:

Q. Mr. Gawtry, the proof of the receipt of coal must be in the operating ledgers, isn't it?

A. I cannot say as to operating ledgers.

Q. In some ledgers or in some book?

A. Some book, surely.

Q. The operating books of the company must show the coal they get in in the course of a year? 10701

A. They do.

Q. The operating books must show the amount of the bills paid during the year?

A. Right.

Q. So that these schedules, Exhibit 284 and 285, must necessarily find their support in the operating books of the company as to the amount of coal received and the amount of money paid?

A. They appear in detail.

Mr. O'Brien: I must take exception to the questions you have asked.

The Master: Why?

Mr. O'Brien: You are assuming that these are supported by the books.

The Master: No, I say they should be.

Mr. O'Brien: If they are any good.

The Master: If they are any good at all. Unless there is some independent proof that a certain amount of coal was received I will not take this schedule as proof of that. He is proving prices rather than deliveries.

Mr. O'Brien: He is trying to prove here about
10703 deliveries. I want to know that, because my examination of the witness will depend upon it.

The Master: I think we can get that perfectly clear. What bothers Mr. O'Brien is, he does not want to feel that Exhibits 284 and 285 are offered as proof of the delivery of a certain amount of coal. I take it that your offer of these exhibits is to show the ranges of prices and the cost of coal delivered. Isn't that so?

Mr. Ransom: To show the total for which we had to pay, and what we paid for it.

The Master: Do you rely on Exhibits 284 and 285 to show the amount of coal you received?

10704 Mr. Ransom: Not exclusively, no.

The Master: Do you rely on them at all to prove that? I cannot take it if you do.

Mr. O'Brien: I will have to renew my motion.

Mr. Ransom: Here is the situation. These things might have been made up exclusively from the books. As a matter of fact with respect to Exhibits 284 and 285, as well as 283, what this witness did was to get out the original vouchers. Of course, those vouchers do show the authentication of the receipt. They are signed, each of

them, for example, I take a typical one here, which is signed by the superintendent, O K'd by the purchasing department as to the price paid, and so on.

The Master: Don't spend any more time on it.

Mr. Ransom: I think in that way, as a tabulation made up from the vouchers, with the accompanying papers showing the receipts, that they do have a degree of force in proving the receipt of these quantities of coal during the year.

The Master: No, they don't do that, and you 10706
don't mean that; you can't mean that.

Mr. Ransom: They are a tabulation—

The Master: Yes, they are a tabulation from proof you say is in the record.

Mr. Ransom: No, not in the record. they are in the records of the company.

Mr. O'Brien: They are papers that have not been offered in evidence.

The Master: If you take the position that these vouchers are not in the records then there isn't any proof at all in the record as to many of the items that you think you have proved. My theory of it is that these books of account re- 10707
ceived in evidence carry with them those vouchers.

Mr. Ransom: I think that is correct.

The Master: And that, therefore, they are in the record. I am quite clear in my mind that this tabulation does not prove anything except that it is a tabulation, and that is all.

Mr. Ransom: It is a tabulation of things which when tabulated do show, that is, these vouchers and the books show—

The Master: Neither this nor Mr. Teele's, nor any other tabulation, is proof of the facts con-

10708 Lewis B. Gawtry, Cross.

tained in those tabulations. They are summaries made for the convenience of the Court, depending on other proofs that must in the case.

Mr. Ransom: The original proof is the vouchers and the books.

By Mr. O'Brien:

Q. Did you go to the books at all in order to make up these figures?

The Master: He has answered that; he took the vouchers.

A. Yes, I did.

10709 Q. You did go to the books?

A. Yes.

Q. To what books?

A. Contract books.

Q. Did you go to the operating ledger to make up these schedules of the prices of coal?

A. No.

Q. Did you go to the journals?

A. No.

Q. Did you go to the sundry debtors' book?

The Master: It is quite clear that this witness did not go to the books of account, so-called, which have been received in evidence. He made

10710 up these schedules from the contract books and the paid vouchers. We have it perfectly clear, and we understand that these tabulations are what they are, and they are received for what they are.

Mr O'Brien: If your Honor receives them with those limitations, then we are not assenting to Judge Ransom's position in the matter.

The Master: I cannot assent to Judge Ransom's position that because this witness has made a tabulation that that proves the fact. There must be independent proof in addition to that.

Mr. O'Brien: I move at this time that the witness' testimony in regard to these papers, and the papers themselves, be excluded from the record in the case.

The Master: I am going to take them as tabulations of the vouchers.

Mr. O'Brien: The vouchers are not in evidence.

The Master: No, but they are in the case. I have just explained that when I received these books in evidence I received in evidence practically all the supporting vouchers, because they are 10712
all at your disposal. My attitude is that every voucher, every bill, every record, every paper, every report which is reflected in these books is in this record. Now, unless those records prove certain facts the tabulations cannot prove them. The tabulations only prove them to the extent that they prove themselves. Tabulations are mere summaries for the convenience of the Court. In other words, this is the situation: Mr. Gawtry gives a tabulation of the price paid and the amounts of coal received from the various anthracite companies in 1913. Unless your experts can find from their books and from vouchers that 10713
they got that much coal, or paid that much money, this tabulation is of no use. I ought to be able to take these books myself and prepare these same figures.

Mr. O'Brien: You will never go into those books, your Honor.

The Master: I say I ought to be able to do it, and it is in order that I shall not be compelled to do it that Mr. Gawtry gives me these figures and gives you a copy, and if there is any error you can call it to my attention.

Mr. O'Brien: The great defect in all this is that you are getting right back to a house of cards.

The Master: Yes, I understand your position.

Mr. O'Brien: There is no proof before your Honor that the papers are reliable even as tabulations.

The Master: I know your position perfectly, I know your attitude, and I know Judge Ransom's attitude. Judge Ransom complains very bitterly that I do not take these books and rec-
10715 ords for what he wants them taken for. He thinks I am holding him to common law proof, and you complain that I am giving him as much as I do give him. Neither side is satisfied; and all I can do is to proceed in the best way I can.

Mr. Ransom: May the record note that Mr. O'Brien has been handed one of these coal vouchers for 1918?

Mr. Clark: Does it follow from the fact that the vouchers are considered in evidence that we can use them for the cross-examination?

The Master: Certainly.

Mr. Clark: And call for them?

10716 The Master: Certainly. I will not allow you to call for three truckloads of stuff at one time, but any paper or voucher in that office that you want to use for the purposes of cross-examination, call for it and you can have it.

Mr. O'Brien: On due and timely notice to the complainant it is understood that they will produce them for cross-examination.

The Master: There can be no doubt about it. They are supposed to be available for your use in cross-examination, or otherwise. There can-

not be any question about that. Is there any in your mind, Judge Ransom?

Mr. Ransom: I think the question is one of reasonable limits within your Honor's discretion.

The Master: Assume that they say they would like to have the coal vouchers for January, 1917, is there any reason why they should not have them for cross-examination?

Mr. Ransom: I should think they might. It is entirely within their power to examine any of these vouchers at the gas company, as they have 10718 done, and then having done that, to cause the production of any of them here.

The Master: Certainly.

Mr. Ransom: What we have endeavored to avoid, and what your Honor has properly ruled, is that we shall not be required to bring down here truckload after truckload for no specific purpose except to have them here.

The Master: It is all a question of a reasonable exercise of rights. If there is any document you would want to test a situation or to prove a fact, call for it and it will be produced.

Mr. Clark: The question arose in my mind be- 10719 cause the other day the Master insisted on Mr. Chambers putting a paper in evidence because he looked at it.

The Master: That is an entirely different situation. That was a paper that had no relation to these other records and documents. It was an entirely different paper that they might not be able to get in evidence at all over your objection. As I explained to Mr. Chambers, the minute you ask a witness to show you a paper and interrogate him about the paper, you are putting it in evi-

dence in effect, because you get the use of it, and if you get the use of it it should be in the record. All this means is that we are trying to get at the facts in accordance with the rules of law, for the safeguarding of the rights of both sides, that is all. When we get through with it I hope to see the fact established one way or the other so that practically all sides will agree. I cannot for the life of me understand how there can be any possible issue when this case is finished as to how much it cost to make gas, within some reason-
10721 able limits.

Mr. O'Brien: The veil has not been lifted yet. Don't be overconfident about that.

The Master: It may be that the engineers of the defendants will have some complicated theories to indicate that they could save some money in the way of making gas.

Mr. O'Brien: No, more than that.

The Master: Maybe more than that. I am talking generally now, I am not prejudging anything. On the other hand, there cannot be much variance as to certain elements. Both sides must agree that it requires oil to make gas. I take it
10722 that it requires oil to make gas, I don't know anything about it. I take it that both sides will have to agree that it requires oil to make gas. I take it that it requires oil to make gas, I don't know anything about it. I take it that both sides will have to agree that it takes some coal to make gas. I take it that both sides will agree that it requires other material that I am unfamiliar with. Now, there are certainly two or three elements that somebody is going to agree on. We are going to agree on something before we get through.

Mr. Ransom: They think we can make gas without either property or materials.

The Master: If they think you can make gas without materials they are very much mistaken.

Mr. O'Brien: We think, among other things, that you don't need to have that waste at 14th Street and 42nd Street and other places, that you don't need a 19-story building, and a lot of other things.

The Master: Mr. O'Brien, this, of course, is true. When we come to the question of invested capital, and as to the return which they should 10724
have, we have the question to deal with as to what you say is wasted; but long before we get to that, if the Consolidated Gas Company has to spend more money, or approximately as much money to make and distribute the gas as they get for it, we won't have to waste much time on whether one block of property is wasted or is not wasted. Let us get to the question of how much it costs to make gas. It doesn't make a bit of difference whether the invested capita, if sixty millions or fifty millions or forty millions, if they don't get the cost of making the gas.

Mr. O'Brien: That is right. 10725

The Master: I am glad we agree on something.

Mr. O'Brien: I don't agree with Judge Ransom when he says there ain't going to be no core here. There is going to be a core, and your Honor's mind will somewhat change when we get to it.

The Master: I didn't know that I had made up my mind.

Mr. O'Brien: You have a conviction now as to the simplicity of this question.

The Master: There isn't a question that was ever tried in any court that is not simple. You gentlemen try to make it complicated, but it is simple. There isn't a question of fact that was ever brought into a court of law that is not perfectly simple when it is analyzed.

Mr. Ransom: It is only the details that are complicated.

The Master: And even the details are not complicated.

By Mr. O'Brien:

10727 Q. Mr. Gawtry, these prices do not include any element of labor or material in handling the coal?

A. Prices on coal you refer to?

The Master: You have covered that. It is the landed price at the dock.

A. Delivered alongside of the dock.

Mr. Ransom: I have a tabulation here showing just the elements that enter into those prices, if you want it.

The Master: Wait until Mr. O'Brien gets through.

Mr. O'Brien: I don't know why you should start to prove this stuff with the witness on the

10728 stand under cross-examination. Why didn't you bring it out on the direct?

Mr. Ransom: You asked for it.

The Master: Go ahead. Let us find out what this case is about.

Q. Did you make up these figures on that paper?

The Master: What paper is that?

Mr. O'Brien: It is a bill of lading, so-called.

Mr. Ransom: It is one of the vouchers.

The Master: What is that paper, Mr. Gawtry?

The Witness: It is a bill from Thorn, Neal

& Co., dated 12/19/18. That is a bill for 598 tons of coal, with a voucher signed by the superintendent of the station at which it was received.

The Master: Mr. O'Brien, what was your question?

Q. Did you have that bill before you in making up this schedule?

A. This individual bill?

Q. Yes.

A. I cannot say that.

Q. That bill I hand you has been handed to me by Mr. Goetz, of associate counsel. It is a paper that was 10730
handed to the Court in connection with Judge Ransom's gratuitous statement about this coal business?

A. If I can refer to that large sheet—

Q. I am asking you about this. Did you have that before you, or do you know whether that was one of the papers?

A. I don't know whether that is the original one I saw.

Q. You told Macklin to set this stuff up, didn't you?

A. Yes.

Q. And he did it?

A. I don't know where you got that bill from. 10731

Q. You don't know what bills he had, do you, except in a general way?

A. I checked every one of them.

Q. Did you have that bill for coal delivered in December, 1918, did you check that?

A. Did this come from Mr. Macklin?

Q. I am asking you a question, don't look over in the gallery.

The Master: Just answer the question. Can you identify that paper as one of the papers that you handled when that schedule was checked up?

10732 Lewis B. Gawtry, Cross.

The Witness: If this is the one—

The Master: Can you identify it now?

The Witness: No.

Q. Do you know whose figures these are here, $4.90, with $1.05 added, making $5.95, and then $1.85 added to produce $7.80?

A. Yes.

Q. Who made them?

A. I did.

Q. Is that your figuring?

A. That is my figuring.

10733 Q. Will you say what these elements are?

A. $4.90 for the coal at the mine; $1.05 was the new price made on the first of November. That made $5.95 at the mine. $1.85 freight rate, making $7.80.

Q. Does that have to do with that particular bill?

A. That particular bill passed through my hands at the time.

Q. Was there any figuring independent of the price on that bill of lading?

A. It had to do with this bill of lading.

Q. In what way?

A. I checked those prices.

10734 Q. Will you tell me what the $1.05 and the $1.85, the two items that you have added to $4.90, have to do with the figures on the face of that bill?

A. $1.05 was the additional price given—

The Master: Wait a minute, Mr. Gawtry.

By the Master:

Q. I do not quite know what is in Mr. O'Brien's mind, but I see here a bill for coal 598.14 tons at $7.85, f. o. b. Hoboken?

A. That is right.

Q. You have testified that the figures on the back were for the purpose of checking up this bill. Is that correct?

A. My pencil figures, right.

Q. Your pencil figures seem to tally $7.80 instead of $7.85?

A. Yes.

Q. Will you explain that?

A. Yes, because Hoboken is an upper port. That is five cents more.

Q. Hoboken is an upper port?

A. Yes.

Q. And you had to add five cents?

A. Yes.

Q. Hoboken is below 96th Street? 10736

A. I know, but it is an upper railroad port, different from South Amboy.

Q. Why does not your lead pencil figures reflect that additional five cents?

A. Because these are the figures we used at lower ports. This happens to be an upper port.

Q. Why didn't you add the five cents to your figures?

A. Because I didn't know what coal that was, probably didn't notice it at the time.

Q. Then these figures on the back do have to do with the checking up of this bill?

A. Probably.

Q. Isn't it quite apparent that you wanted to see 10737 whether $7.85 was the correct charge?

A. That is right.

Q. Isn't that apparent in connection with your figures?

A. Yes.

By Mr. O'Brien:

Q. There is no reason why you should feel shocked when I ask you these questions?

A. I am not shocked at all. It is lucky I can check it up so quickly from memory.

The Master: I tell you, Mr. O'Brien, you approach many of these questions from the standpoint of suspecting the honesty of the people in the Consolidated Gas Company. I don't think you get anywhere with that suspicion with reference to every item. The Consolidated Gas Company has been under the supervision of the Public Service Commission for the last eight or ten years or more, and I think we will get further if you will assume that they are honest rather than dishonest. That does not, of course, bear upon the fact as
10739 to how much it costs to make gas, but when you suspect that there are rebates, secret rebates, and all that sort of thing, the public is prone to suspect everybody of being dishonest.

Mr. O'Brien: I can simply say that I am here to protect the interests of the defendants in my own way, not in the way that somebody else would have it.

The Master: But I don't think you get anywhere.

Mr. O'Brien: Whether I get anywhere or not, I will have discharged my duty, whether I get anywhere or not. My spirit in it is *agnosco*, I
10740 don't know. I didn't make the witness look suspicious, it is the unnecessary action on the part of counsel. Now, I want to prove what I say. Here is a man apparently put on the stand to tell about the prevailing prices. As a matter of fact it is surreptitious way of proving deliveries of coal.

The Master: They are not proving it that way.

Mr. O'Brien: If you take it as you are taking it, but he gives the high, low, Jack and the game,

the high-low, just the range of prices, and if we did as counsel for the other defendants have done, let these things in without much cross-examination, it might have the effect of appearing to prove deliveries. When we get into it we find that counsel is trying to prove a vital thing in this case, to make up for a grave error that has been committed in allowing in these books.

The Master: Does he succeed?

Mr. O'Brien: They are in the record, with your limitations.

The Master: Does he succeed? 10742

Mr. O'Brien: Your ruling did not allow him to go as far as he would like to go.

The Master: Let us have the next question.

Mr. O'Brien: So far as my attitude toward witnesses is concerned I am looking for the truth, I do not intend to twist it or turn it. All I want is to have the thing come out, and the better he proves his case the more satisfactory it will be. I want Mr. Gawtry to say that he simply depended upon the work done by some men under him. That won't be a crime.

The Master: This is what led me to my observation: When I looked at a voucher like that, 10743
and I see some lead pencil figures on the back, and Mr. Gawtry says those are his figures, I can see at once that Mr. Gawtry, in the performance of his duty, checked up the prices charged on that bill by the items which make it up, to see whether it was right. I can see that at a glance, and there is no necessity of spending a lot of time on it.

Mr. O'Brien: Just a word on that point to justify myself. You will recall that when I asked the witness about going over this he seemed to

be surprised. He did not recognize his own figures when I first handed it to him.

The Master: That is quite natural, that he would not. He did not look at that particular thing.

Q. I hand you a paper, which I will ask to have marked for identification—

The paper was marked Defendants' Exhibit X for identification.

Q. I hand you a paper marked Defendants' Exhibit X for identification, which you call a voucher, pur-
10745 porting to cover purchase of 589.70 tons of coal at amount stated to be $5,193.49, and I ask you if that voucher was written in the Gas Company's office?

A. It was not.

Q. Where was it done?

A. At the office of Thorne, Neale & Company, Inc., Whitehall Building.

Q. But the paper is printed "The Consolidated Gas Company of New York, general office 130 East 15th Street"?

A. We usually send out billheads to the people from whom we purchase supplies.

Q. You usually do?

10746 A. Always.

Q. Well, that is quite an unusual practice in the business world, is it not?

A. No, it is not.

Q. This is printed form No. 364—20 M—1 of 18. That is the form number on it, isn't it?

A. Yes.

Q. You print these coal bills and send them around to all the dealers?

Mr. Ransom: I object to the question. It does not appear it is simply coal dealers. It is a standard form of invoice.

The Witness: A standard form of invoice.

Q. You are repeating counsel's words?

A. Very good words, very descriptive.

Q. Yes. Well, now, these figures then were not made up in Thorne, Neale & Company's office; they were made up in the Consolidated Gas Company's office?

A. I said they were made up in Thorne, Neale & Company's office.

Q. Have you got in court the bill of Thorne, Neale & Company, that covers this particular purchase?

A. That is their bill. We send them a blank bill- 10748
head, and send to everybody from whom we purchase supplies, and they make up their bills on those billheads.

The Master: What is the idea of that, Mr. Gawtry?

The Witness: To make it uniform. We have a thousand kinds, all different shapes.

The Master: The same size, you mean?

The Witness: Yes. The railroads do that. It is done very generally in business practice, Mr. Master.

Q. Look at the typewriting?

A. Yes. 10749

Q. Can you say from that where that was made up?

A. I cannot, no.

Q. Who is F. W., auditor?

The Master: Show it to the witness.

The Witness: Lambrecht.

Q. What?

A. F. L.

Q. You call that L, do you?

A. Lambrecht, his name is.

10750 Lewis B. Gawtry, Cross.

Q. I say do you call that second letter an L?

A. F. W. Lambrecht is his name; that is his initials.

Q. F. W. Is there any other letter there?

A. F. A. I think it is. F. A. Lambrecht.

The Master: The Master says that last letter looks like an L.

Mr. O'Brien: Well, the paper is marked for identification.

The Master: It looks like an L to me.

The Witness: F. A. Lambrecht.

Q. What is this purchasing commission?

10751 A. That is a commission allowed, 20 cents a ton on anthracite and 15 cents a ton on bituminous, allowed by the United States Fuel Administration.

The Master: Who was that bill rendered by?

Mr. O'Brien: This is a bill of the Consolidated Gas Company, your Honor.

The Master: No, what is the name of the coal company?

Mr. O'Brien: It says to Thorne, Neale & Company, Incorporated.

The Master: Are they jobbers?

The Witness: Jobbers, yes coal we purchased from them.

10752 Mr. Ransom: I am told it is F. L. Lambrecht.

The Witness: F. L.

The Master: I did not think it was an A. You can see the last letter is an L.

Mr. O'Brien: Well, it looked like F. W. to me, but I don't know. A man may have his own peculiar way of writing his monogram.

Q. That commission would not have been paid to Peters, had you purchased from them?

A. No.

Q. There were some of those concerns that you paid a commission, and others were not paid?

The Master: That is fully covered.

The Witness: That is right.

Q. Well, does Thorne, Neale pay the boat freight?

A. That price is delivered alongside of our dock.

The Master: That includes the lighterage, does it?

The Witness: Yes.

Q. So you do not have to cover the lighterage on these coal purchases?

A. We have nothing to do with lighterage.

The Master: It is included in the charge made for the coal? 10754

The Witness: Coal alongside of our dock.

The Master: But the coal alongside of your dock figures out, including railroad transportation and lighterage?

The Witness: Lighterage and taxes.

The Master: In other words, you paid so much at the mine plus transportation and taxes?

The Witness: And insurance.

Q. Whose signature is that "W. L." prices correct, purchasing agent?

A. That is not purchasing agent. That is "for purchasing agent," scratched out. The price is correct. That has been checked with the contract book. 10755 The auditor checks the prices on coal and oil.

Q. Who is W. L.; do you know?

A. I do not. W. S., I think it is. I think it is Schoenfish.

Q. He is one of your subordinates?

A. Yes, but not directly under me. He is in the accounting department. He checks these for the auditor's department.

Q. S-c-h-o-e-n-f-i-s-h?

A. Yes.

10756 Lewis B. Gawtry, Cross.

Mr. O'Brien: I will ask counsel now to produce—

The Master: I would like to have it noted on the record that this Exhibit X for identification has attached to it a form which is headed "Consolidated Gas Company of New York, No. 2817," and is filled out in lead pencil, and I will read it as filled out. "Received from Thorne, Neale & Co., Inc., by 99th Street department. Description of material 597.30 tons Scranton coal by F. A. Wertheim, bill of lading 598.70 tons,
10757 date of this voucher December 28, 1918, date material received December 27, 1918. Approved (something) Castro, Superintendent," and printed on the bottom, "Vouchers must reach accounting department 48 hours after material is received." I notice the amount of coal reported to have been received was .40 less than the amount billed. Do you know whether any deduction was made for that variance?

The Witness: No; all of our coal is at railroad weights.

The Master: Railroad weights?

The Witness: Yes.

10758 The Master: You have to pay at railroad weights?

The Witness: Yes.

The Master: Even though it differs from your weights?

The Witness: Yes.

Q. State for the record what that railroad weights means?

A. The coal as weighed by the railroad.

The Master: I see this, that the bill charges 598.14, and the bill of lading apparently was

598.70, and your measurement was 597.30. What did you pay on, the 598.14? That was something less than the railroad weight.

The Witness: We paid on the bill of lading weights, 598.70.

The Master: No.

The Witness: On the railroad weights, 598.14.

The Master: Well, but the bill of lading was apparently—but that bill is made up from bill of lading weight?

The Witness: Yes, bill of lading weight.

The Master: But what is this weight down 10760
here?

The Witness: I don't know.

The Master: This bill of lading, 598.70—

The Witness: Yes; I don't see why that doesn't agree with that.

Q. Well, it disagrees with it, doesn't it?

A. A fraction of a ton.

The Master: The bill of lading is a little more than the amount charged. Is it possible that the coal company weighed it at 598.14 and billed it at that, in spite of the fact that the bill of lading and railroad weights showed a little, a shade more, 598.70? 10761

The Witness: It should not be. It should be the same.

The Master: Have you ever noticed that variance before?

The Witness: No.

Q. Have you ever seen the little old man that weighs the coal up at 99th Street station?

A. Yes.

Q. That octogenarian up there?

A. He has been at it a number of years.

Q. What?

A. He has been at it a long time.

Mr. O'Brien: Will counsel produce the contracts now? I understand they are in court, and we will cross-examine the witness about them.

Mr. Ransom: They were here the other day; I assume they are here today.

The Witness: I have got all of the contracts.

Mr. Ransom: Produce them. If you have the contracts here today will you produce them?

10763 The Witness: What year do you want?

Mr. O'Brien: Why, take 1917.

The Master: It is perfectly apparent what has happened. The clerk who wrote out that bill made it .14 instead of 14/20ths, and they paid it on the bill of lading weight. Mr. O'Brien, I think I will spread a statement on the record with reference to that exhibit, to make it clear. It is quite apparent to the Master from looking at the voucher that the clerk who wrote out the bill and made the charge 598.14 made a mistake and should have said 598 14/20ths instead of .14, which conforms with the bill of

10764 lading weight 598.70, the .70 being equivalent to 14/20ths of a ton, and the company paid the bill on the bill of lading weight of 14/20ths rather than .14.

Mr. Ransom: In the office of Thorne, Neale Company the price which they figured was 598 14/20ths, but instead of putting that down as the quantity they had .14, and when it came to the gas company it was found that the bill of lading weight was 598 14/20ths tons, and at the price of $8.67, the sum which Thorne, Neale

10765

& Company had billed them, was correctly computed.

The Master: I felt it was only right to get it correctly on the record. In other words, the amount the charge is equivalent to 598 14/20ths of a ton, instead of 598.14, and 598.70 tons is the same as 598 14/20ths.

Mr. O'Brien: This is something that we have dug up, your Honor. They came up and handed it to us.

The Master: No, but having called attention to it, I thought I ought to call attention to the explanation.

10766

Mr. O'Brien: You will find a good many errors if you have the data in court.

Mr. Ransom: And they are all susceptible of the same explanation.

Mr. O'Brien: I do not suppose that this company is infallible; there are a good many leaks.

The Master: Of course it is not infallible.

By Mr. O'Brien:

Q. Mr. Gawtry, has any rebate been made by the Philadelphia Coal & Iron Company to the Consolidated Company?

10767

A. No, sir.

Q. On any contracts made since 1913?

A. No, sir.

Q. These memoranda which you have on these various letters which have been handed to me by counsel for the complainant when I asked for contracts, were those memoranda made at the time of the correspondence?

A. Everything was made at the time. I have made nothing since then.

Q. They are in your handwriting?

10768 Lewis B. Gawtry, Cross.

A. Yes.

Q. The various—

A. (Interposing.) Pencil memoranda.

The Master: You better show that to the witness, Mr. O'Brien. That is the better way. You better direct the witness's attention to what you have in mind.

Q. Calling your attention to a letter from Frank Oberrender, dated June 27, 1917 (handing witness paper)?

A. These are my pencil memoranda.

10769 Q. Pencil memoranda made at the time the letter was received?

A. Right.

Q. Will you state what proportion of coal was bought during 1917 and 1918, on which you paid a commission, and coal on which you did not pay a commission?

The Master: It has been covered, Mr. O'Brien.

Mr. O'Brien: Not definitely, your Honor.

The Master: As definitely as you will get it. I think he said a small percentage, 20 or 30 per cent, or less than that.

10770 Mr. Ransom: Much less than that.

The Master: Yes, a very small percentage.

Q. You have not it figured out, anyway, Mr. Gawtry, have you?

A. No. It is very small, though.

Q. Some of these deliveries were the subject to correspondence after they came?

A. A great many.

Q. Was there any payment made, by way of readjustment, by the companies to you?

A. No.

Q. Were any of the vouchers or any of the amounts in the vouchers that were the basis of your blueprints here, showing coal purchases, readjusted subsequently in any way?

A. There were none.

Q. I call your attention here to the Sales Agent of Thorne Neale, a letter dated September 7th, 1917, where you ask in detail their reasons for asking an increase of 50 cents on a gross ton. I take it that you started the controversy by that. Look at that letter and see whether any money afterwards came back to you by reason of your calling attention of 10772
Thorne Neale to the provision in the contract (handing witness paper)?

A. That price was increased because there were changes made by the government at that time. This was during government supervision. This was when Mr. Garfield had—it says, "Replying to yours of the 7th inst. would say that the reason we are compelled to increase the delivered price of broken coal on account of your purchase, is owing to the fact that the D., L. & W. Coal Sales Co. from whom we draw the tonnage advanced their prices to us 57 cents per ton on September 1st. Their present price is the one allowed by the United States government. So 10773
far as our margin of profit is concerned it is no more than that which figured in the delivered price as stipulated in contract." These prices were all under government supervision at that time, sir.

Q. Getting back to the period prior to our entry into the war, how were contracts made? Was it a letter setting forth a price and an acceptance?

A. Letter, word of mouth, formal written contract signed.

The Master: Prior to war conditions, Mr.

Gawtry, did you permit these coal companies to increase the price on you from time to time?

The Witness: No, sir.

Q. Prior to our entry into the war did you yourself make your contract with the coal companies?

A. I gathered together such information as I could, from where we could get the coal, what coal it is, where it was mined, over which railroad it was shipped, if the coal was acceptable to our engineers. We test all the coal, you know, that we use. I made up the records for the executive committee.

10775 The Master: I do not think you are answering Mr. O'Brien's questions. Did you make the contracts for coal?

The Witness: I made them and signed them, that is all.

Mr. Ransom: That has all been gone over and they have been produced.

Mr. O'Brien: I ask you to produce them.

Mr. Ransom: Mr. Clark has had for some time the 1916 contracts.

Q. Mr. Gawtry, take these papers for a moment —they have been handed to me, a number of these things, by counsel for the defendant as a contract— 10776 and pick out a paper there that is a contract for the purchase of coal and let me have it.

Mr. Ransom: You are referring now to 1918?

Mr. O'Brien: No, I go back before the war.

The Master: Any one. Hand him one contract.

A. These are all letters by this Thorne, Neale Coal Company, one of our largest dealers.

The Master: You are handing to Mr. O'Brien a letter from the Lehigh & Wilkesbarre Coal Company to you, dated April, 1916, attached to which is a copy of a confirmation of sale dated

April 4th, 1916, also a letter from the Lehigh & Wilkesbarre Coal Company to F. L. Lambrecht of the Consolidated Gas Company, dated April 21st, 1916, attached to which is a memorandum of towing rates, Port Johnston Line, April 20th, 1916. Are these four papers one contract or two contracts?

The Witness: One contract. There is certain memoranda with it, you see.

The Master: Mr. O'Brien, the witness hands you those four papers as constituting one of those contracts. 10778

Mr. O'Brien: I will ask that this be marked for identification, your Honor.

Same marked Defendants' Exhibit Y for identification (consisting of four sheets).

Q. Did you have authority to make contracts yourself?

A. I presented them to the executive committee and the committee awarded the contracts to the respective bidders.

Q. You would have a telephonic communication first? Was that your practice?

A. With the people who bid on it?

The Master: I think we have gone far enough on that. 10779

Mr. O'Brien: What I want to get here is a definite record of the contracts. I want the papers marked for identification and I want the statement that these are all the contracts for the period covered.

The Master: For certain years.

Mr. O'Brien: For certain years.

The Witness: Absolutely, I have got the contracts for 1913 to 1919, inclusive.

The Master: Let us take the 1913 contracts.

10780 Lewis B. Gawtry, Cross.

We will get it now; hand Mr. O'Brien those 1913 contracts.

(Witness complies.)

Q. Each folder would be a contract, Mr. Gawtry?

A. Yes.

The Master: Mr. Gawtry will hand you one at a time. I do not understand that there is any difference between a contract composed of correspondence and a contract that looks like a legal document.

By the Master:

10781 Q. Is this a contract that I now hand you, Mr. Gawtry (handing paper to witness)?

A. A contract with correspondence attached, yes.

Q. With whom?

A. With the Pittsburg Coal Company.

Q. This last paper starts "This agreement," and that is the contract?

A. Yes, sir.

Q. The rest of it is correspondence?

A. Correspondence.

The Master: Do you want to mark the contract or all of it?

10782 Mr. O'Brien: We will mark it all for identification.

Mr. Ransom: The entire batch?

Mr. O'Brien: Yes.

The Master: In other words you now offer for identification contract with the Pittsburg Coal Company, dated the 3rd of February, 1910, and the correspondence attached. What is the use of marking all these?

Mr. O'Brien: For reference to them afterwards.

The Master: I will permit the 1913 to be

marked for identification and I will find out what the purpose of it is.

Marked Defendants' Exhibit Z for identification.

The Master: Here is a contract dated the 3rd of March, 1913, with the Berwind White Coal Company.

Marked Defendants' Exhibit AA for identification.

The Master: Here is a contract with the Westmoreland Coal Company. What date is that?

The Witness: The 4th day of April, 1913. 10784

Marked Defendants' Exhibit BB for identification.

The Master: The next is a contract dated 27th of February, 1912, with the Consolidation Coal Company. Did that run over the year 1913?

The Witness: It is a three-year contract.

Marked Defendants' Exhibit CC for identification.

The Master: Contract with the Jamison Coal and Coke Company, dated March, 1912, with some correspondence attached.

Marked Defendants' Exhibit DD for identification. 10785

The Master: The next is a contract dated the 4th of April, with the Penn. Gas & Coal Company.

Marked Defendants' Exhibit EE for identification.

The Master: The next is a contract dated the 10th of April with the Pittsburg Terminal Railroad and Coal Company, P. Nicholl & Company, sales agents.

Marked Defendants' Exhibit FF for identification.

The Master: The next is a contract dated the 9th of April, 1913, with Hite & Rafetto.

Marked Defendants' Exhibit GG for identification.

The Master: The next is a contract dated the 8th of April, 1913, and is with the New Central Coal Company.

Marked Defendants' Exhibit HH for identification.

The Master: The next contract appears to be made up of a letter, a copy of which is pro-
10787 duced, written by L. P. G., vice president, to Williams & Peters, dated February 26, 1913, a letter from Williams & Peters to Lewis P. Gawtry, vice president, Consolidated Gas Company, dated the 27th of February, 1913, covering 75,000 tons of broken coal.

Marked Defendants' Exhibit II for identification.

The Master: The next contract appears to be made up of correspondence, a letter from the Lehigh & Wilkesbarre Coal Company to the Consolidated Gas Company, dated February 20th, 1913, and a reply from Mr. Gawtry, vice
10788 president, to the Lehigh & Wilkesbarre Coal Company, dated February 24, 1913.

Marked Defendants' Exhibit JJ for identification.

The Master: The next contract appears to consist of a letter from Lehigh Valley Coal Sales Company to Consolidated Gas Company, dated February 25, 1913, and reply from Consolidated Gas Company to Lehigh Valley Coal Sales Company, dated February 26, 1913.

The paper was marked Defendants' Exhibit KK for identification.

The Master: Are those all of the 1913 contracts?

The Witness: Yes.

The Master: What is the purpose of marking these for identification, Mr. O'Brien?

Mr. O'Brien: For the purpose of reference, your Honor.

The Master: In other words, you want to be sure that you have a record of all of them?

Mr. O'Brien: Yes, these cover other matters, of course, and I want to catechize the witness about some of the matters. 10790

The Master: Now, we will take for 1914, I shall not require them to be marked for identification, but I shall require the witness, if counsel so requests, to read off every contract, the date, with whom it is made, and whether it is a formal contract or consisted of correspondence, very much as I have dictated in 1913, and we won't waste the time, or I won't say waste; we won't spend the time to mark them for identification. Now take 1914.

The Witness: Berwind-White Coal Mining Company, March 5, 1914, 100,000 tons.

The Master: We assume that this is a formal contract unless you say it is by correspondence. 10791

The Witness: I will tell you, sir, when it is by letter. Westmoreland Coal Company, February 26, 1914, 50,000 tons. Penn. Gas Coal Company, February 26, 1914, 50,000 tons. Lehigh and Wilkesbarre Coal Company, February 26, 1914, 80,000 tons and correspondence.

The Master: Better say the correspondence consists of a letter from Lehigh Valley Coal

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Sales Company to Consolidated Gas Company, dated February 27, 1914.

The Witness: Lehigh & Wilkesbarre.

The Master: A letter from Consolidated to Lehigh & Wilkesbarre, dated February 26th, you say?

The Witness: Yes.

The Master: And a letter from Lehigh & Wilkesbarre to Consolidated, dated March 2nd, and another letter from the Lehigh & Wilkesbarre to Consolidated, dated March 3, 1914?

10793 The Witness: Yes. Williams and Peters' letter February 21, 1914, to Consolidated, 20,000 tons; Consolidated Company's answer, February 26, 1914, and an addition made on January 6th —that is, 1915. That is all.

The Master: Well, that runs until April. I think you better refer to that. This contract with Williams and Peters was started by letter on February 21, was amended in January, 1915, which was for that year, by the addition of 20,000 tons, by the letter of January 12th, of Williams & Peters to you and your answer on January 13th, confirming the 20,000 ton addition?

10794

The Witness: Yes, but that was confirmatory.

The Master: It ran from April, 1914, to April, 1915.

The Witness: Yes.

The Master: So that this 20,000 tons was added during that business year?

The Witness: Yes.

Mr. Ransom: During that coal year?

The Master: That coal year.

The Witness: Yes, during that coal year.

The Master: Now, take the next year.

The Witness: Pittsburg Coal Company, February 15, 1915, 625,000 tons in five years, with correspondence attached; Westmoreland Coal Company, March 10, 1915, 150,000 tons in three years.

The Master: Correspondence attached?

The Witness: Correspondence attached. Penn. Gas Coal Company, March 10, 1915, 150,000 tons, three years, correspondence attached, Consolidation Coal Company, January 10796
26, 1915, 375,000 tons, three years, correspondence attached. Pittsburgh Terminal Railroad and Coal Company, December 31, 1915, 75,000 tons, correspondence attached. Hite & Rafetto, January 15, 1915, 75,000 tons, no correspondence. New Central Coal Company, January 15, 1915, 75,000 tons; Lehigh & Wilkesbarre Coal Company, March 11, 1915—I am wrong about that—March 12, our letter to them, and their letter to us of March 12, 1915, no correspondence; Williams & Peters, March 3, 1915, 65,000 tons; correspondence attached; Lehigh Valley Coal Sales Company, March 5, 1915, 7,000 tons, 10797
correspondence attached; Patterson & Barnes, October 28, 1915, 10,000 tons, correspondence attached.

The Master: Now, let us have 1916.

The Witness: Williams & Peters, May 18, 1916, 125,000 tons; correspondence attached; Philadelphia & Reading Coal & Iron Company, August 4, 1916, our letter to them of May 17, 1916, their letter to us of May 8, 1916, with correspondence attached. Lehigh Valley Coal Sales Company, July 27, 1916, 10,000 tons, cor-

10798 Lewis B. Gawtry, Cross.

respondence attached; Lehigh & Wilkesbarre Coal Company, April 3, 1916, their letter to us, and our answer April 4, 1916, and correspondence attached.

The Master: Now, 1917.

The Witness: Thorne, Neale & Company, April 2, 1917, 70,000 tons, correspondence attached; Philadelphia & Reading Coal & Iron Company, June 27, 1917; correspondence attached; Meeker & Company, March 28, 1917, 15,000 tons, correspondence attached; Lehigh
10799 Valley Coal Sales Company, out letter of April 17, 1917, with memorandum attached; Berwind-White Coal Mining Company, April 10, 1917, 75,000 tons, correspondence attached; Lehigh & Wilkesbarre Coal Company, April 6, 1917; correspondence attached. Williams & Peters, April 12, 1917, our answer of April 12, 1917, correspondence attached.

The Master: Now, 1918.

The Witness: Here is just correspondence with the Berwind-White Coal Mining Company, no contract.

The Master: Well, refer to it as correspond-
10800 ence.

The Witness: Correspondence, Berwind-White Coal Mining Company.

The Master: The date of the first letter being, to Mr. Berwind, April 12, 1918, a copy of it. Go ahead.

The Witness: Westmoreland Coal Company, March 28, 1918, 125,000 tons, correspondence attached; Consolidated Coal Company, correspondence, letter of March 25, 1918, correspondence attached; Jameison Coal & Coke Company, April 1, 1918, 100,000 tons, correspondence at-

tached; J. H. Weaver & Company, April 27, 1918, 100,000 tons, correspondence attached; Lehigh & Wilkesbarre Coal Company, correspondence, first letter April 9, 1918; Williams & Peters April 5, 1918, correspondence; Philadelphia Coal & Iron Company, May 16, 1918, correspondence; Thorne, Neale & Company, January 1, 1918; correspondence; Lehigh Valley Coal Sales Company, March 19, 1918, letter; Thomas Stokes & Sons, April 11, 1918, authorizing them to purchase.

The Master: Copy of a letter to Thomas Stokes & Sons? 10802

The Witness: Yes.

The Master: Now take 1919.

The Witness: Berwind-White Coal Mining Company, April 1, 1919, 100,000 tons; Westmoreland Coal Company April 9, 1919, 108,000 net tons; Consolidation Coal Company, April 17, 1919, 100,000 tons; Williams & Peters, April 25, 1919, 60,000 tons; Lehigh & Wilkesbarre Coal Company, April 7, 1919, our answer April 18, correspondence 100,000 tons; Pittsburgh Terminal Railroad & Coal Company, September 15, 1919, 96,000 tons. 10803

Q. Mr. Gawtry, I notice here the use of the term "lump coal." What is that?

A. It runs over three-quarter screen, it is not the run-of-mine or screen, it is what they call three-quarter screen or lump coal.

Q. Where they do not use the term three-quarter screen, but use the term "lump coal," isn't that run-of-mine?

A. Yes, run-of-mine. It may be slack, but slack is still different.

Q. Well, whether you get one thing or another means something in the matter of price, doesn't it?

A. It means a great difference to us.

Q. If they contract to deliver lump screen or lump coal, and you get something else, you do not get what you pay for, and you do not get the results that you contemplated?

A. That is right.

Q. Is there any time or any case where you went back to a coal company since 1913 and claimed that they did not give you what they bargained for?

10805 A. In quality, yes.

Q. Yes; and have you got a record of it?

A. We have got numerous letters of complaint that I have written.

Q. Did it end with a complaint?

A. Promises to do better, promises to pay more attention to their screening.

Q. Did you get any money back for the company by reason of this inferior coal that was delivered?

A. No, we did not.

Q. How many such letters have you written; how many times did you have to complain?

A. I can't say offhand; a good many.

10806 Q. Well, you said numerous?

A. Yes; twenty.

Q. That might mean a hundred to you, and perhaps not so many to me.

A. No, twenty. Coal is not manufactured to order. Coal is a product that comes from the mines; you have to take it a good deal as it is, but you choose the mines from which the coal comes. Certain mines have more sulphur; certain mines have less; certain mines have a higher volatile coal; certain mines have less. We choose the mine, but the coal is not made

to order; it is not made under our prescription, so to speak, or our specification.

Q. I know, but when they do not live up to their contract, don't you think you are entitled to some readjustment?

A. Certainly we are. They do live up to their contracts pretty well, because we buy very high priced coals, very high standard coals, the best we can find. We find it is an economy, our engineering department finds it an economy.

Q. When you say you buy high priced coal, do you mean you pay more than other gas companies 10808
do?

A. We do not.

The Master: For the same grade of coal?

The Witness: More, no, sir.

The Master: You do not pay more for the same grade of coal?

The Witness: No.

The Master: Do you get a better grade of coal than the other gas companies?

The Witness: No, a good many gas companies buy the same. These are pretty standard gas coals.

Q. Well, the term grate coal? 10809

A. Yes.

Q. What is grate coal?

A. Grate coal is broken coal, anthracite.

Q. Is it just the same as broken coal?

A. Yes. One company calls it grate; we call it broken. It is a trade name we use for coal.

Q. Is there any difference in the grade of broken coal, so-called, in the trade, and grate coal?

A. No, I think not.

Q. When did the term first come into use?

A. Ever since I have known anything about coal. I do not know.

Q. It has been used right along?

A. A great many years.

Q. Well, it is not used so much in your contracts as broken coal, is it?

A. No. I think Williams and Peters on their schedules call it grate, if I am not mistaken.

Q. They use it a good deal, that term, don't they?

A. Other people call it broken. I think you will
10811 find in the coal trade journals it is called broken, the trade name (referring to magazine) broken, egg, stove, chestnut and pea; that is the way the coal trade journals in the trade know it.

Q. Well, if there is not some understanding about it, and you make a contract for grate coal, is it understood that you are to get broken coal for it, or something other than broken coal?

A. Broken coal and grate coal are the same.

Q. Absolutely?

A. Yes.

Q. Identically?

A. Yes.

10812 Q. It is not a larger size of broken coal?

A. No.

Q. Or a smaller size?

A. No.

Q. Or an inferior kind?

A. No. Broken coal is the standard phrase.

Q. Well, are there different grades of broken coal?

A. No; the difference means the different coal grade they use.

Q. Well, are there some mines better than others on the broken coal?

A. Most assuredly.

Q. What mines are the first-class?

A. The coal that we buy is supposed to be picked from twenty or thirty different coals after numerous years of testing, that we considered best for our gas making purposes.

Q. You have come to the conclusion that there are certain mines that have the best?

A. Yes.

Q. And they are what mines?

A. The coal that we buy.

Q. Well, would you call them; name the companies that you say produce the best qualities?

10814 Mr. Ransom: That has already been gone over. He described the mining regions, and he has named the companies.

The Master: I think so; the contracts were all spread on the record.

Mr. Ransom: The competition as to coal is in the quality and not on the price.

Q. Well, when you buy from Thorne, Neale & Company or other contractors or operators, the men to whom you paid this unnecessary commission, you—

Mr. Ransom: I object to the language of counsel.

10815 The Master: Strike out the word "unnecessary" and I will allow the question. If the word "unnecessary" stays in I will rule out the question.

Mr. O'Brien: This commission. I have to take it out, your Honor.

Q. (Continuing.) Did you specify the mines from which they are to deliver the coal to you?

A. Yes. They get D., L. & W. coal, Delaware, Lackawanna & Western Coal Sales Company coal.

Q. Thorne, Neale & Company does?

A. Yes, sir.

Q. Stokes, too?

10816 Lewis B. Gawtry, Cross.

A. Yes. I could not buy it.

Q. What?

A. Yes. I could not buy it.

Q. Why?

A. Because they had taken all the stove, chestnut, pea, buckwheat and their other sizes, and a certain amount of broken that they had, and we purchased from them that broken and had to pay their commission as a war measure. It was the only commission we ever paid, was during the war, and those
10817 commissions were allowed by the United States Fuel Administration.

The Master: We have had that already, Mr. Gawtry.

The Witness: I did not think I made that clear.

The Master: Perfectly clear to me.

Q. Do you mean to infer by that that you went to them because you wanted to get the broken coal that they had?

A. I went to them because the only coal I could find in the market was there. I went to probably thirty different coal people, and that was the only coal
10818 I could get, and I would have purchased 100,000 tons more if I could have got it that year.

The Master: And paid the commission?

The Witness: And paid the commission. It was not a matter of price; it was a matter of a supply of coal to keep our plants operating, and insure a continuity of gas supply in the City of New York.

Q. You are talking about 1918?

A. Yes. We were very low in coal. Coal was very scarce.

Q. Well, why did you allow the Cleary Brothers

the 15 cents a ton there in 1915 for lighterage, when you were not compelled to do so under your contract?

A. I don't know what contract they had. I don't know what towing they did.

The Master: Show the correspondence to him.

Q. Don't you remember that?

The Master: No, of course he doesn't.

Mr. Ransom: He doesn't have charge of the lighterage.

The Master: Yes, he does.

Mr. O'Brien: I am asking him about something he wrote letters about, and I am assuming he remembers it. 10820

The Master: Show him the correspondence you are talking about.

Mr. O'Brien: Every time we start asking a question we are told this is not this witness's business. You would not think he had a part to play in this company.

Q. In 1915 you had quite some correspondence, and they appealed to you because Cleary Brothers were good fellows, and were stuck on a contract to give them fifteen cents a ton more. Now, I ask you why you did that? 10821

A. I find correspondence from the vice president of the Westmoreland Coal Company, saying that Messrs. Cleary Brothers—we buy our coal alongside, we made no contract with them—"Mr. Cleary, of Cleary Brothers, who does our towing at South Amboy"—

Mr. O'Brien: I did not ask the witness to read that letter, your Honor. I asked him a question why he made this rebate.

The Master: I want him to read it.

Mr. O'Brien: Or gave this additional charge.

The Master: I want him to read it.

The Witnes (reading): "Mr. Cleary, of Cleary Brothers who does our towing at South Amboy, very largely, and particularly to the Consolidated Gas Company, has informed us that there has been three successive increases in towing rates around New York Harbor, and that he is losing money on every ton of coal he delivers to you, and that he should have an advance in his towing of 15 cents a ton, to let him out whole. I know we have a contract with you which covers this freight, and if you hold us strictly to this con-
10823 tract, we of course, have no choice but to hold Cleary Brothers, anxious as we are not to do so, but to help him. We, ourselves, unfortunately, are losing money like Cleary Brothers, on every ton of coal we deliver to you, and of course, under the circumstances, are unable to help Mr. Cleary out. I wish to ask you whether you would be willing to pay to Mr. Cleary 15 cents per ton advance for towing freight. I desire to say Mr. Cleary has been a very faithful servant of yours, and has helped us much to keep down freights many a time when there was a combination to put them up. Yours very truly, H. C. Adams, Vice
10824 President, Westmoreland Coal Company." That was in 1917, and this contract was made in 1915, two years before.

The Master: Well, what happened?

The Witness: I allowed it.

The Master: You allowed it?

The Witness: Yes.

The Master: You thought it was good business judgment to do it?

The Witness: Yes, I fully realized the cost of that work was more than it was when the contract was entered into. (Reading): "Isn't fifteen cents

a ton a pretty big increase?" But I did allow it.

The Master: Why?

The Witness: Because we had to have coal.

The Master: But the Westmoreland Company was bound to deliver it, weren't they?

The Witness: Yes; but if anybody is delivering and is falling behind with every ton of coal they give us, we are not apt to get very good deliveries.

The Master: Well, Cleary Brothers might have caused considerable trouble and delay on the rest of it? 10826

The Witness: They would not have had boats.

Mr. O'Brien: I object to the Master's statement.

The Master: What?

Mr. O'Brien: I want to note an exception.

The Master: Well, I am asking a question.

Mr. O'Brien: Well, I am making my usual objection and noting my exception. I think you are getting into conjecture when you ask him what Cleary Brothers might have done.

The Master: No, I am talking about the business experience of practical business men. They will very frequently stand for being blackmailed if necessary, they will very frequently stand for increasing a price, rather than have a man find that he hasn't got boats available to get the coal when they want it. What I am trying to get at, is whether this witness reached an honest conclusion that it was good business judgment to give Cleary Brothers what they wanted, rather than take a chance of having boats missing when they wanted coal. 10827

Mr. O'Brien: Well, that is asking the witness to draw a legal conclusion.

The Master: No, I am asking him for the operation of his mind at that time.

Mr. O'Brien: You would not expect him to say that it was dishonest judgment, or he had made a mistake?

The Master: Well, I am convinced that Mr. Gawtry probably did what many other business men are doing many a time, and I have done it myself, where a man is obligated to do something at a price, and I know perfectly well I can hold him to that price, and yet I know he can annoy the
10829 life out of me and make life miserable to me unless I give the increase, and I give the increase to get the stuff. That is what business men are doing and have done for the last two or three years all the time.

Mr. O'Brien: That is not the war period.

The Master: In 1917.

Mr. O'Brien: In 1915.

The Witness: 1917, sir. 1915 was the contract, and this occurred in 1917, during the year.

The Master: Even in 1915 conditions were pretty bad, the war was on them.

Mr. O'Brien: You have the contract for 1915.

10830 The Master: That was a contract for 1915; it ran for three years, and that correspondence there was away along in 1917.

Mr. O'Brien: Conceding all that, we were not in those conditions in the early part of 1917 that obtained in 1918.

The Master: You won't get anywhere attacking the honesty of a man who did a thing of this kind.

Mr. O'Brien: Well, where I get, your Honor, that remains to be seen. It doesn't make any difference where I get, I am going to make my record.

The Master: All right.

Mr. O'Brien: I am going to ask him the questions.

The Master: The witness has testified he made that allowance, and he did it to be sure he would get his coal when he wanted it, and Cleary Brothers would not find their boats were out somewhere else when they wanted them. That is the answer.

Mr. O'Brien: There was a contract with the Westmoreland people, and they had to produce.

The Master: Contracts do not mean a thing 10832
when you try to get your merchandise promptly. You know that.

Q. During the years 1917 and 1918, was there a guarantee, Mr. Gawtry, of the quality of the coal?

A. There was not. The coal was shipped to different pools made by the United States Fuel Administration. The coal came to those pools, and we did not always get the same coal that we purchased.

Q. Then you did not expect under your contract to get coal of any given standard?

A. We could not.

Q. Did you stop making your tests?

A. We tested every cargo that came in. 10833

Q. Even though it was not prescribed in the contract?

A. Yes, sir.

Q. When they used the expression "run of mine," does that mean that you had to take everything they sent you?

A. No, we don't buy run of mine. We have in certain emergencies, but as a rule we do not contract for that.

Q. What does the expression mean?

A. Just as described, practically run of the mine.

The Master: If you do buy on the basis of run of mine you take what they give you, practically?

The Witness: Not screened.

Q. Well, screened run of mine, what does that mean?

A. There is no such thing.

Q. Are you sure?

A. Screened run of mine?

Q. Yes.

A. Yes.

Q. Are they contradictory terms?

10835 A. Yes.

Q. Are you sure of that?

A. They run the coal over certain sieves—

The Master: Cannot the run of the mine have reference to the quality of the products—no, it could not.

Q. I hand you here a contract of Aprii 1st, Jameson Coal & Coke Company. They have a reference here to the quality, Farmington, run of mine, or three-quarter inch screened coal. Are those contradictory terms?

A. You have the word "or" there. There are two kinds of coal, they are different.

10836 Q. They are different?

A. Yes.

Q. That means that they can give you the run of the mine, or the other kind if they wanted to?

A. Yes, at different prices. There is a differential usually of 15 or 25 cents or 30 cents a ton.

Q. Look at that contract and see where there is a provision in it for a difference in price for either of the two qualities?

A. The price fixed is the maximum price for the Fairmount District for the grade of coal shipped under government regulation in effect at the time of each

shipment hereunder. The United States Fuel Administration made the price.

By the Master:

Q. The fact is there would be a different price fixed for the different grades?

A. Yes, a difference of 25 cents.

Q. How do you find that?

A. That is fixed by the United States Fuel Administration.

Q. The differential between the three-quarter inch screened coal and the run of mine?

A. Yes. 10838

By Mr. O'Brien:

Q. When it is delivered to you how do you know whether it is one or the other?

The Master: How do you know whether a coat is blue or brown?

A. Our engineers know that by years of experience.

Q. Perhaps you don't get my question. Is it billed to you as one or the other?

A. Yes.

Q. And is there some latitude given to them to send you either one or the other?

A. We did not get any run of mine there. We seldom get it. Occasionally we have had it, we have 10839 had to take it during the war time.

By the Master:

Q. I take it, without knowing the first thing about it, that apparently when you get run of mine coal there are varying sizes, and you can see it at once, whereas, if you get three-quarter inch screened coal it is uniform size. By looking at it you can see the difference?

A. Of course you can.

Q. I probably could myself?

A. You could see it as plain as day.

Mr. Ransom: An office boy could see it.

By Mr. O'Brien:

Q. Is it an unusual thing to enter into a contract for one or the other, giving them the alternative?

A. No, sir.

Q. Is it a usual thing?

A. During the war period we took any coal we could get.

The Master: Outside of the war period it is not usual for you to take run of mine, is it?

The Witness: No. We have taken it to fill up
10841 stock occasionally, but it is not customary.

Mr. O'Brien: At this point I will suspend upon these contracts, because I want to give them some inspection before going further.

The Master: When you make that statement I shall take it that you are through with the cross-examination except that you may want to recall him at some future time, that you are through with him now, but if you want to recall him later on and he is available, you may do so.

Mr. O'Brien: Well, let it stand that way. Of course I would prefer to have it an unfinished cross-examination.

10842 The Master: No. You see the reason I do not want it an unfinished cross-examination is this: we have a long record, we have four volumes now, and this case will go on for weeks and perhaps for months. When we get through we will have to find out whether certain witnesses have or have not finished their cross-examination. Now, I know as I go along that every witness is finished as to his cross-examination, that all up to date are finished except Mr. Wood, Mr. Teele and Mr. Brundage and one or two of the deputy commissioners.

Mr. O'Brien: The whole case has been put in that way, it has been a hop, skip and jump.

The Master: No, Aldrich's testimony is finished, I know that, except that you may recall him at some future time for further cross-examination.

Mr. O'Brien: For amusement, I would like to have him.

The Master: I know several, in fact most of the deputy commissioners have finished their examinations, there is nothing more to be said about it. I want to assume as witnesses are discharged, 10844 that their cross-examination is finished, always leaving it, as I said before, that you can recall any of them if they are available.

Mr. O'Brien: Then the only difference between your Honor's ruling and my request is that the burden is on us to bring him here.

The Master: That is not what is in my mind so much. I want to save the complainant the loss of a witness's testimony because they cannot get him into court, but so long as they are still in their employ I assume they will produce them.

Mr. Ransom: In this connection there is the matter of the possible death of witnesses. During 10845 this trial two men on whom we would very largely have relied have died.

The Master: That is the danger.

CROSS-EXAMINATION BY MR. CLARK:

Q. Mr. Gawtry, on this Exhibit No. 285, on bituminous coal, on the second page, you have in 1917, 515 tons of coal at $6.58?

A. Yes.

Q. As against the item above that, 736 tons at $3.22?

A. Yes.

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Q. From whom was the 515 tons purchased?

A. The Berwind-White Coal Company.

Q. Was that purchased under contract?

A. It was.

Q. And on the next page we find purchased from the Berwind-White Coal Company 1,700 tons of coal in 1918, at $6.87 as compared with 1181 tons from the Westmoreland Coal Company at $4.29?

A. Right.

Q. What was the reason that you paid the Berwind-White Company so much more than the Westmoreland

10847 Company in both those years?

A. Because the Westmoreland contract was made three years prior to that at a very low price. It paid us handsomely, the company saved hundreds of thousands of dollars. The Berwind-White contract was made during the war and at abnormal prices, any price fixed by the government.

Q. Those were government prices?

A. Government fixed prices.

Q. Did the government not interfere with the prices of your bituminous coal contracts?

A. Oh, yes, indeed—you mean reducing the bituminous coal contracts?

10848 Q. Didn't you testify that bituminous was less at the time of the government control?

A. No. Bituminous coal now is higher than under government control.

The Master: I think the point Major Clark has in mind is this: You said the government practically abrogated all your contracts. How did you manage to get your coal at the contract price from the Westmoreland Company?

The Witness: They did not abrogate the prices of the coal, they abrogated deliveries.

The Master: Did you get some coal under your contract prices during the war period?

The Witness: Oh, yes.

Mr. Ransom: And still are under one contract.

The Witness: Still are under one contract.

The Master: The government did not interfere with your prices?

The Witness: Not on prices.

The Master: There was one contract, I remember, where somebody said that some other company had to pay fifty cents more a ton and they would have to pass it on to you.

The Witness: That is where we purchased through a jobber, Thorne, Neal & Co. 10850

The Master: That was what was in your mind, wasn't it, Mr. Clark?

Mr. Clark: Yes, that is what I had in mind.

The Master: I thought you had testified that the government had practically abrogated all contracts?

The Witness: The deliveries of all contracts. They did not upset the prices. There was one contract made April 1, 1915, that is still in existence.

Q. Does that apply to both bituminous and anthracite coal?

A. It does. 10851

Q. The government did not upset your anthracite coal contracts, either?

A. They are subject to government change in freight rates or mining rates. When the government increases the mining rates or increases the freight rates, these contracts change.

By the Master:

Q. They change automatically?

A. Automatically.

Q. But in accordance with the contract?

A. In accordance with the contract.

Q. In other words, some of these contracts survived war conditions and some did not?

A. That is right.

Q. As to some of them the mines or vendors had the right to cancel, and under some of them they did not protect themselves?

A. We had one contract made at $1.12 1/2 at the mine. The government adds 30 cents to that.

Q. What for?

A. To stimulate mining, give the miners more.

Q. In other words, that contract was based upon
10853 the present rate of wage to the miners?

A. At that time.

Q. If they had to pay more to their miners they charged you more?

A. Charged us more.

Q. And they had a right to do that under their contract?

A. All coal contracts are made that way.

Q. In other words, there is a system in coal contracts that those prices are based upon present cost of production?

A. Present cost of production.

Q. And if the cost of production goes up the price
10854 goes up accordingly?

A. The price goes up accordingly.

By Mr. Clark:

Q. Mr. Gawtry, I notice in the 1916 contracts there is one contract on which you had noted on the back in your own handwriting in pencil that in case the mining rates went down you were to get the benefit of that, but if they went up there was to be no change in the contract. Do you recall that, or can you find that in here?

A. I think that was an anthracite contract, if I remember.

Q. Yes, it was. It was in 1916.

The Master: Would you try to get that kind of an advantage if you could?

The Witness: Most assuredly, sir.

Mr. O'Brien: What he did with the Westmoreland Company he should have done in a lot of cases.

The Master: But you can't always do it.

Mr. O'Brien: He should have done it with gas oil.

The Master: You can't always do it.

Mr. O'Brien: The Public Service Commission of New Jersey are operating, I think, on a three-cent a gallon contract made some years ago. It is a question of foresight. 10856

(Witness examines contract.)

A. I remember that.

Q. You have found the memorandum I spoke of. What is the significance of that memorandum in your handwriting?

A. If the price declined we were to have the advantage of it. Should the prices advance the price will not be advanced to us.

By Mr. Ransom:

Q. What contract is that? 10857

A. Williams & Peters, May 18, 1916. We were protected to that extent.

The Master: Major Clark has asked you what is the significance of that.

A. That protected us to that extent. They probably wanted more tonnage, and I probably say to them, "What do we get out of it?" And they said, that if the price of mining went up they would not advance the price to us.

Q. They wanted to furnish more coal to you than you ordered from them?

10858 Lewis B. Gawtry, Cross.

A. They always tried to do that, they always want to sell as much as possible.

By Mr. O'Brien:

Q. In that year?

A. 1916, yes.

By Mr. Clark:

Q. Then they were practically making a fixed price for you in this contract, I mean a maximum price?

A. A maximum fixed price, yes.

Q. But you testified that ordinarily you did not get a maximum?

10859 A. I think that is the only case I know of.

Q. Was there any particular reason in that case why you got that from them?

A. I don't remember now.

Q. Do you remember whom you made that agreement with?

A. I think I have that marked, "Telephone H. P." That is Harry Peters, probably.

Q. Was Williams & Peters any more anxious to furnish you coal than the other coal companies?

A. Yes, very anxious. They all are when they have it. They do not always have it.

By the Master:

10860 Q. You did not have that in your contract anywhere, did you?

A. No, that is a telephone memorandum.

Q. Why did you not have it put in your contract?

A. I cannot say.

Q. The letter to you was May 11th, and apparently you wrote this on the back of the letter, and the contract is May 18th. Well, you do not remember?

A. I cannot say now.

By Mr. Clark:

Q. Are there any other contracts for coal, oral or written, besides these that have been produced here?

A. Absolutely none except those that have been submitted today.

Q. Under that telephonic agreement was there any reduction in the price of coal from that contract?

A. There was not. I do not think I have ever had a reduction in the price of anthracite in my experience. It has been going up, up, up.

Q. Since 1913 you do not ever recall getting coal at a less price than was named in the contract?

A. The government made a reduction of 10 cents a ton in 1918. That is the only reduction I know of.

Q. That was on bituminous? 10862

A. That was on bituminous, by the United States Fuel Administration. It is the only reduction in the price of coal that I remember.

Q. In the majority of cases was coal delivered at a higher price under these contracts?

A. Delivered at the contract price.

Q. At the contract price, and there was no variation from that price on account of the additional cost of mining the coal?

The Master: That would still be under the contract. It was not a fixed price, so the fact that the price was increased did not make it other than the contract price. 10863

Mr. Ransom: The contract price took in variable elements.

Mr. Clark: As I understand it, there is a certain basic price under which they receive coal on some of their contracts, even up to the present time.

Mr. Ransom: I have a tabulation showing the elements, year by year.

By the Master:

Q. Have you been getting coal right along at the original basic price under these contracts, or has the

10864 Lewis B. Gawtry, Cross.

basic price been increased automatically pursuant to the terms of the contract in every instance?

A. Not in every instance, no. For years we have gone by without a change.

Q. In the last few years?

A. Oh, no, in the last few years it changed a good deal.

Q. In the last few years is there any contract that you recall where you are still paying the basic price?

A. No.

By Mr. Clark:

10865 Q. In the Westmoreland contract are you not still paying the basic price?

A. We made a new contract last April.

Q. But on the old contract?

A. There are different things that come in there, the rate of wages, for instance.

Q. And take the Berwind-White contract; it was so much below the Berwind-White contract.

A. Yes, it started lower.

Q. How much higher was it in 1918 than when the basic price was made?

A. It was not in effect in 1918.

The Master: Say 1917.

10866 Mr. Clark: I think it was in effect in 1918.

The Witness: You want to know what year?

Q. What year was the contract entered into and what was the original price?

Mr. Ransom: Of the Westmoreland Company.

A. In 1915.

The Master: What was the basic price?

The Witness: That was a price of $3.35 alongside. That was about $1.35 at the mines.

Q. It was $3.35 alongside?

A. Yes, and about $1.35 at the mines.

Q. Have you this Exhibit 285 there?

The Master: No, he has not got that.

Q. Could you tell me whether that was delivered under that contract?

A. Yes.

Q. That is delivered at $3.22?

A. $3.22.

Q. That is an alongside price also?

A. That is right. It was increased at different times because of mining rates and freight rates.

The Master: What was the basic price there?

The Witness: $3.35.

Q. There was a reduction? 10868

A. No, it is the same.

Q. You said it was $3.22.

A. Then I am wrong. That is the Consolidation Coal Company.

The Master: Where do you get $3.22?

The Witness: It is the Consolidation Coal Company.

The Master: No, it is fourth item here. It is not carried into 1916 or 1917 at all; it ends in 1915 at $3.35.

The Witness: We are talking about different companies.

The Master: It is fourth on that list. 10869

The Witness: Well, that was carried over. The Consolidated Coal Company is the one.

Q. That was a still lower contract?

A. Yes, that is West Virginia coal, which is lower than Pennsylvania coal always—until the Fuel Administration took charge

Mr. Ransom: Was that a five-year contract?

The Witness: That was a three-year contract.

Mr. Ransom: Which was the five?

The Witness: The Pittsburg Coal Company.

Q. Then there was an increase up to 4.2963 on the Westmoreland contract in 1918?

The Master: That was a new contract.

A. Up to April, 1918, was the old contract; then the new one went into effect.

Q. What increases were there in that Westmoreland contract?

A. I think I can tell you that in a minute.

The Master: Have you got the variations from the time the contract was made in 1915?

The Witness: No, I would have to figure it out. It would cover a period of three years, with all the mining changes.

10871 Mr. Ransom: You have them during 1918?

The Witness: I have them during 1918, yes.

The Master: We have had that. I think we have covered it.

Mr. Clark: It is not at all clear to me.

The Master: That exhibit shows the price at which the contract was made, the basic price of each contract.

Mr. O'Brien: It may involve different prices. It is an averaging of different prices during the year, if there were different prices?

The Witness: There were different prices, due to freight rates, etc.

10872 Q. In 1917 it refers to an entirely new contract. That Consolidation contract is an entirely new contract?

A. That Consolidation contract was from 1915 to 1918.

Q. And the prices in 1918 were on the old contract?

A. I do not remember any changes during that period.

Q. But here you have a price against the Consolidation Coal Company of $3.22, as against $3.12 in 1915. Is that a new contract?

A. No, there was a change.

Q. There was a change?

A. It climbed up from $3.12 to $3.22.

Q. Under the old contract?

A. Under the old contract, as the mining rates increased. There were increases in railroad rates, mining rates, and all these contracts have a give and take clause. If the mining rates and freight rates go up the price goes up; if the mining and freight rates go down the price goes down.

The Master: But they never go down?

The Witness: Not recently.

Mr. O'Brien: You do not have so much trouble 10874
with the bituminous, I suppose, as you do with the anthracite?

The Witness: The bituminous is very scarce now. We are getting anthracite better than bituminous. Mr. O'Brien.

Mr. O'Brien: How about 1918?

The Witness: 1918 was about the same; bituminous was scarce. When the steel mills are running full and the country is prosperous generally the bituminous is apt to be scarce. If it is a cold winter the anthracite is scarce.

Mr. Ransom: And more is exported.

The Witness: Yes. 10875

By Mr. O'Brien:

Q. You mean bituminous used for steam purposes when you speak of it getting scarce and when the steel mills are running?

A. I mean such bituminous as we use, coal for gas making purposes. It is also used in very large quantities by the steel companies. They are very large buyers of it from the same concerns that we buy from. It is the same coal.

Q. Did you have to take your bituminous under the same arrangement during the year 1918 as anthracite?

10876 Lewis B. Gawtry, Cross.

A. Yes. You will notice practically no contracts there.

Q. Mr. Gawtry, there are no purchases of coal outside the formal contracts?

A. Absolutely none.

Q. Made by you during the last two years?

A. We have purchased a cargo for sample here and there. I do not suppose five or six cargoes in five or six years. Merely to test it out. We get samples all the time, you know, to put through our laboratory.

The Master: From different mines?

10877 The Witness: From different mines.

By Mr. Clark:

Q. You testified in contracts for purchases of less than $1,000 you did not have the contract approved by the executive committee?

A. Right.

Q. What method do you pursue in making those purchases?

A. That is brought to me. Anything of any moment up to that price is brought to me and I pass upon it.

Q. And the purchase is made?

A. And the purchase is made.

10878 Q. You approve the order, is that it?

A. I approve the purchase. The purchasing agent will say, "Here are four bids for certain goods, and the prices are so and so, is it a good time to buy, and we need this now," or we buy for the future or we buy for our present requirements, and the price is $800, is it the cheapest and best? All right, go ahead.

Q. You buy your gas appliances such as stoves for the affiliated companies? A. They come in under our contract, yes.

Q. Do you deliver them to those companies? Do you know whether they are delivered to those companies?

A. They come in carload lots, in large units. We have nothing to do with deliveries.

Q. Do you know how they come in? For instance, if you bought a thousand stoves for the use of the New Amsterdam or the Standard Gas Companies, would you not have a check on the delivery of those goods?

A. We would know how many were received under the order given. That is checked up.

Q. And you would pay for the thousand stoves, would you not?

A. Yes. It might be billed direct. I cannot tell 10880
you.

Q. Suppose the stoves were put in the building at 130 East 15th Street, would you know that they were there?

A. I would not know exactly which stoves. I know there are some stoves stored there now, put into stock, yes.

Q. Would the companies in the building, the affiliated companies, requisition stoves from you? Do you have anything to do with that?

A. Not from me, no. I have nothing to do with that detail.

By Mr. O'Brien: 10881

Q. Mr. Gawtry, I notice that this schedule of bituminous prices shows nothing for 1916?

A. We did not buy any for 1916.

Q. You did not buy any for 1916?

A. No deliveries during 1916 of bituminous for the Consolidated Gas Company.

Q. What did you do for bituminous?

A. We did not use any, and if we did use any we used it from stock. We did not buy any; there were no deliveries. We only had those two small stations.

10882 Lewis B. Gawtry, Cross.

Q. You mean at 21st Street and 99th Street?

A. Well, the bituminous is 14th Street and 42nd Street. 21st Street and 99th Street are anthracite.

By Mr. Clark:

Q. Do you have anything to do with taking an inventory of coal at the beginning of the year?

A. No.

Q. You see a report of the inventory as the basis of what you are to buy for the year?

A. I know the stock on hand.

Q. You know that at all times?

10883 A. At all times.

Q. Do you know how that is arrived at?

A. Well, I know, yes. We have measured our coal, and we start with a certain yard and receive so much, use so much, and there is a balance which is stock. We check that up by actual measurement, actual surveys, at different times.

Q. Who has checked that up?

A. The engineering department.

Q. You do not have anything to do with that yourself? A. No, I do not.

Q. You get their reports? A. That is an engineering matter. Mr. Woods can tell you about that in

10884 detail.

Q. You purchase all of your meters from the American Meter Company?

The Master: That has been answered; it has been covered; he said probably 90 per cent of the meters are purchased from the American Meter Company, because they make 90 or 95 per cent of all the meters used.

Mr. Clark: I do not remember that testimony, your Honor.

Q. Is the meter a patented article?

A. It is.

Q. How long have they used the same type of meter?

A. Well, the so-called dry meters have been used a great many years in this country; there are many so-called changes inside of the dials and a thousand and one other things.

Q. There have been recent patents on the meters?

A. Oh, yes; I happen to read the Patent Gazette and see a patent is taken out, and I see innumerable patents taken out on meters.

Q. And they are taken advantage of by the meters that are made by the American Meter Company? 10886

A. Yes.

Q. They have the latest patents?

A. They control practically all the meter business in this country.

Q. Do they control the patents?

A. I think they do; I am not sure.

Q. How far have you looked into the question of meters and the possibility of getting meters from another company?

Mr. Ransom: I think that has been all covered.

A. We do that continually. We bought two thousand meters from another company a short time ago, a small company. 10887

Q. Were they as good as the other meters of the American Meter Company?

A. We cannot tell that; they have only been in use a short time.

Mr. Clark: I do not think I have any other questions at this time, your Honor. I would like to look over these contracts.

The Master: The cross-examination is completed, then. You are excused, Mr. Gawtry.

Mr. Chambers: I would like to ask a few questions. I do not know whether it has been covered or not.

The Master: I will tell you very quickly if it has been.

By Mr. Chambers:

Q. You say the prices set forth in Exhibit 283 were competitive?

A. They were.

Q. What did you mean by that, Mr. Gawtry?

Mr. Ransom: That has been gone over. I object to it.

The Master: Objection sustained.

Mr. Chambers: It has been fully covered?

10889 Mr. Ransom: Yes.

The Master: Mr. Chambers, I am going to rule that unless you want to ask him some questions about Exhibit 284 or 285, that came in this morning, your examination is completed. You cross-examined Mr. Gawtry the last time he was on the stand as to the usual procedure. Mr. O'Brien has cross-examined him for four hours today, and I think you will find that his examination has been very exhaustive. If you will take my suggestion you will not press any further cross at this time, but see if you want anything later on. If you do, I will call him back.

10890 Mr. Chambers: With that understanding I am satisfied. There are some questions here we want, though.

The Master: If there is something you need, proceed.

Q. Were competitive bids asked for on all the materials quoted, with the exception of coal and oil?

The Master: Objection sustained.

Mr. Chambers: On the ground it has been answered?

The Master: Yes.

Q. Are prices all net prices after discount for

prompt payment has been subtracted, as well as the usual trade discount?

A. Yes.

Q. Upon what items did they get discounts for prompt payment?

A. I could not say that offhand.

Q. You do not know?

A. Not offhand, no.

Q. Why did you not show the prices prior to 1913?

Mr. Ransom: I object to the question.

The Master: Let the witness state. He probably was not asked to. Answer the question. 10892

A. I was not asked to in the beginning, no, but everything started in 1913. I have given 1913 and 1918 as a comparison.

Q. You know that the complainant claims lack of adequate return prior to that time, do you not—1913?

A. Yes.

Q. What prices did the company pay for coke during each of the years from 1913 to 1918, inclusive, where coke was purchased from outside companies, those not controlled by the Consolidated Gas Company; can you tell that?

A. The only coke that would be purchased outside of the coke purchased from the Astoria Light, Heat & Power Company is from the Seaboard Coke Company of Jersey City. 10893

Q. What price did you pay?

A. It is so much a ton under anthracite. I could not tell you offhand.

Q. You do not know the prices?

A. Not here.

Q. Who connected with the Consolidated Gas Company is familiar with the prices paid to subsidiary and allied companies for coke?

A. That is a matter of record in the accounting de-

partment. Some of the engineers are conversant with it.

Q. Who would it be?

A. Mr. Woods, I think, would have that.

Q. Are you prepared to give the amount of material bought at different prices for the period from 1913 to 1918? Can you give that?

A. Give what, Mr. Chambers?

Q. The amount of material bought at the different times and the different prices.

A. We have it on record. We could compile it. It
10895 would be a tremendous job. In tonnage, you mean?

The Master: The cost.

Mr. Ransom: The books show that.

The Master: We have been all over that this morning, but Mr. Chambers has been given some questions by the experts that he wants to ask.

Q. Can you give the prices you actually paid in the last five years for lead and the amount purchased at each price?

A. Yes, we could.

Q. You could get that from the books?

A. Yes, but I have not got it here.

Mr. Chambers: I think that is all.

10896 The Master: Any further questions, Mr. Chambers?

Mr. Chambers: I do not think he has the matters I want here.

RE-DIRECT EXAMINATION BY MR. RANSOM:

Q. Mr. Gawtry, you were asked by Mr. O'Brien at the last hearing whether you could give any information as to the changes in water freight during the year 1918. Have you made up such a statement in blueprint form covering both bituminous and anthracite, and is this such a statement (handing to witness)?

A. It is.

Q. The figures there are correct to your knowledge?

A. They are.

The Master: Didn't you testify to these figures before?

Mr. Ransom: They were not as of a definite date.

The Master: I thought you gave the figures.

Mr. Ransom: Not by companies and precise dates.

The Witness: Yes, it was given by companies.

Mr. Ransom: He said about so and so. 10898

The Master: My recollection is, Mr. O'Brien, that you asked him for specific dates and he has simply put them on a piece of paper, that is all.

Mr. O'Brien: I do not want this laboratory data.

The Master: That is not laboratory data, that is just a statement.

Mr. O'Brien: I mean this data prepared out of court. When I went at that witness I wanted to find out what he knew, what he could tell us, so he could demonstrate on the stand that he did know something about the purchasing department. 10899

Mr. Ransom: We were asked whether we could produce these things at the next hearing. Now we have and you object.

The Master: Then withdraw them. I do not think it is necessary.

Mr. Ransom: I think it is important from our point of view. I would be glad to have them in evidence.

The Master: Tell us what the rates were.

The Witness: Water freight, 1918, Berwind White Coal Company, January 1st, 45 cents, April 1st—

10900 Lewis B. Gawtry, Re-direct.

Mr. O'Brien: Pardon me. Is this what you allowed them for freighting?

The Witness: This is what was allowed in our bill for freighting. April 1st, 45 cents; May 1st, 45 cents, Westmoreland Coal Company: January 1st, 31 cents; April 1st, 45 cents; May 1st, 45 cents.

Mr. O'Brien: We will assume that from May 1st on it was that rate.

Q. Those figures cover the bituminous?

A. They do.

10901 Q. And after May there was no change?

A. No bituminous delivered here.

Q. No bituminous delivered?

A. No bituminous delivered to the Consolidated Gas Co.

The Master: Give us the same information with reference to anthracite.

The Witness: Water freight, 1918, Williams & Peters; January, 20 cents, February the same, March the same.

Mr. O'Brien: You are reading now from the blueprint.

The Master: He is reading from a memoran-
10902 dum that he has got to refresh his recollection.

The Witness: April 1st, 40 cents; May 1st, 40 cents; June, 25, July, August, September, October, November and December the same. Lehigh & Wilkebarre Coal Company; January, February and March 31 cents; April 1st, 40 cents; May 1st, 40 cents; June, 45; the balance of the year the same. Stokes & Sons; January, February and March no deliveries; April, 45 cents; no deliveries the balance of the year.

The Master: Are you through with it?

The Witness: No. Meeker & Company; Janu-

ary, 25 cents; no deliveries the balance of the year. Thorne, Neale & Company; January, February, March, April and May, 40 cents; June, July and the balance of the year, 45 cents.

Philadelphia & Reading Coal & Iron Company: January and February, no deliveries; March and April, 30 cents; May, 40 cents; June, 50 cents; the balance of the year the same. Lehigh Valley Coal Sales Co.; January and February, no deliveries; March, 29 cents; April, 40 cents; the balance of the year the same until December, when it was jumped to 45 cents. 10904

The Master: Anything else that was asked for?

Mr. Ransom: Mr. O'Brien asked for a table showing the variations in the different elements of price, as to each of the companies and each of the months during 1918.

Q. Have you prepared such a statement?

Mr. O'Brien: Did I ask for that? I asked the witness questions.

Mr. Ransom: You asked whether certain things could be produced at the next hearing.

Q. Have you made up a statement showing what I have indicated? 10905

A. I have.

Q. First as to anthracite, that is such a statement (handing paper to witness)?

Mr. O'Brien: Your Honor, this is going to bring on a cross-examination and it is near the end of the session. I think we might have it brought out tomorrow. I have got other appointments and I do not want to have the matter hurried in here at the eleventh hour.

Mr. Ransom: We will be through here in a few moments.

The Master: You cannot get through in a few moments. Mr. O'Brien is going to start a cross-examination. I have been trying to let Mr. Gawtry go. The thing to do, under the circumstances, as Mr. Gawtry is anxious to go, is to recall him as a new witness. I will let you put it in then.

The Witness: I would rather finish now.

The Master: You will not be able to finish today. These things are taking longer than I expected, and I think I will have to have all day
10907 sessions after next week. I have got to, to finish this case.

Mr. Ransom: I think Mr. Gawtry better, if he can, be here tomorrow.

The Witness: Will I be through tomorrow?

Mr. Ransom: I cannot guarantee that.

The Master: I think I will guarantee it. If this witness is not finished by recess tomorrow I will arrange to sit tomorrow afternoon to finish it for him.

Mr. O'Brien: Of course, your Honor, I will have to object to any longer sessions. I think at present this going on at 9:15—

10908 The Master: The heated term proposition is dead.

Adjourned to October 1st, 1919, at 9:15 A. M.

Last Complainant's Exhibit No. 258.
Last Defendants' Exhibit.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 10909

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, October 1, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 10910
MR. O'BRIEN, of Counsel for defendant Swann.

LEWIS B. GAWTRY resumes the stand.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Gawtry, at adjournment yesterday we were speaking of the table which you said you had made up in pursuance of the request at the previous hearing, showing month by month and company by company, 10911
the prices paid for each anthracite and bituminous coal within towing limits during 1918, with special reference to the variances in price during that year. Is this the table to which you referred (handing paper)?

A. It is.

Q. And is it made up from your records and known by you to be correct?

A. It is.

Mr. Ransom: I offer it in evidence.

The Master: Show it to the other side.

Mr. Chambers: Is this the same table as you had before?

Mr. Ransom: No, it gives the variance in price during the year. The other gave quantities and weight of average prices. These give the different elements entering into the prices—insurance, railroad freight, water freight, war tax and gross ton at the mines.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Who made this up, Mr. Gawtry?

A. I did.

10913 Q. When you say that, you mean personally?

A. Personally.

Q. What did Mr. Macklin have to do with it?

A. Nothing.

Q. Is this made up from bills of lading?

A. Contracts.

Q. Contracts only?

A. Contracts, records that we have of the prices paid when we did not have contracts.

Q. What records?

A. Book records, prices of bills, memorandums that I have.

10914 Q. Well, there is such a thing then as buying coal without a contract?

Mr. Ransom: I object to the question. That has already been gone over. Of course, in 1918, that situation has been fully covered. There were no contracts in any legal sense of the term during 1918.

The Master: I will allow the question. Answer the question.

The Witness: Very few contracts in the year 1918. This covered 1918.

Q. You are repeating now what counsel just said in his objection to you.

Mr. Ransom: I object to that.

The Master: That objection is sustained. I won't allow that kind of questions.

Mr. O'Brien: Well, I called your Honor's attention repeatedly to the fact that Mr. Ransom interposes in the form of an objection, a statement to the witness.

Mr. Ransom: Not at all to the witness.

The Master: The witness is intelligent enough to make his own statement, if he does not like the statement of counsel. If he likes the statement of counsel, and if it expresses his view, he 10916
is going to repeat it.

Mr. O'Brien: I am calling attention to the practice of counsel for the complainant.

The Master: Don't worry about that. Let's get to the fact.

Mr. Ransom: Counsel's practice is to object to the question when he thinks it objectionable.

Mr. O'Brien: May I call your Honor's attention to the question? The witness said he had made this up from contracts and from records—

The Master: Go on and ask your question.

Q. What were the records, Mr. Gawtry, other than contracts from which you made up this schedule? 10917

A. The bills and my memoranda, my information that I have, the schedules of the United States Fuel Administration. All these prices during this period were covered by that.

Q. Then you did not confine yourself to vouchers?

A. I confined myself to vouchers in each case, yes, but in addition to checking the vouchers, I had to go back to the United States Fuel Administration, and memoranda that I had, and from my own personal knowledge of prices and conditions.

The Master: I won't permit any more cross-examination at this time. I am going to allow that in evidence as a condensed form of taking the witness's statement under oath as to the facts stated in that schedule. I will then permit you to cross-examine as if the witness had orally made the statement contained on that schedule.

Mr. Chambers: Before your Honor rules it in I was waiting to record an objection.

The Master: That is all right. I am going to permit you to. I say I won't permit any further
10919 cross-examination, and I have anticipated your objection by indicating that I shall overrule it, and I will give you an opportunity, of course, to place it on the record. Now, I tried to indicate to you yesterday, Mr. O'Brien, that this witness could very properly be asked: "Do you know these facts?" And if he says, "I know them," then the next question comes, "Well, state them," and he states them. Now, that is all this tabluation amounts to, it is a condensed form of giving the oral proof, and I illustrated that yesterday by having the witness go right through that form.

Mr. O'Brien: Your Honor, I want the record
10920 so complete that it will show the basis of our objections similar to the objections to the schedules of the witness Teele and the books of account.

The Master: I have done this two or three times, and I will do it again, to see if I cannot get my point clear to you. Would there be any objection to asking this witness whether he knows? Whether he knows—listen to that, now—whether he knows what the towing limit was and what the price was. There could not be, in the nature of things, and having stated that he knows, is

there any objection to a question, "Well, what was it?" There could not be any in the nature of things, and that is all this means. Now, having said—

Mr. O'Brien: We are referring to the schedule here, and the witness is now for the first time incorporating in his answers, as the basis of his statement, his testimony, his records, private memoranda.

Mr. Chambers: May I say one word?

The Master: I won't permit it in just yet. As I understand it, Judge Ransom has offered in evi- 10922
dence a schedule entitled "anthracite coal within towing limits 1918," consisting of four sheets.

Mr. Ransom: Yes, month by month.

The Witness: One sheet is bituminous.

Mr. Ransom: I have another for bituminous, which I will presently offer.

The Master: This is anthracite?

Mr. Ransom: Yes.

The Master: Now, just follow me for one moment.

By the Master:

Q. Now, Mr. Gawtry, have you refreshed your recollection as to the gross tons at the mines, the price, 10923
insurance, freight and so on, for the various companies?

A. Yes, sir.

Q. And do you know what those prices were and what those charges were?

A. I do.

Q. And can you tell us what those figures were for each company?

A. I can.

The Master: My next question, gentlemen,

10924 Lewis B. Gawtry, Cross.

will be, state what it was with reference to Williams and Peters. Is there any objection to that question?

Mr. Chambers: There is this—

The Master: Mind you, he says he knows.

Mr. O'Brien: As a matter of fact he does not know, and he proceeds to get some memorandum, and he can't give us the price—

The Master: He is refreshing his recollection.

Mr. O'Brien: The man has come in here without anything from his head except some documents that are in that office. Let me explain myself—

10925

The Master: I understand you, you don't need to explain yourself. I am trying to make you understand me.

Q. Have you any memorandum here that will refresh your recollection?

A. A copy of the sheet you have there.

Q. Does that refresh your recollection?

A. Yes.

Q. And referring to that sheet, will you state to your knowledge the facts contained in it?

10926 A. I can.

Mr. Chambers: If your Honor please—

The Master: I am seeing if I can't get this so that you will agree with me without my having to ask him forty-seven questions, asking him for his knowledge. Of course, you have the right to cross-examine him, but I am asking you now, is there any objection in the light of this witness's testimony, that having something before him, I don't care what it is, he does know to his knowledge, under oath. My next question is, what was the price per gross ton at the mines for

Williams & Peters in January, 1918. Now, is there any objection to that?

Mr. Chambers: Possibly not that, but I want to record an objection—

The Master: I am eliminating the schedule entirely now, forget it. I am asking this witness some questions. Is there any objection to that question on your part?

Mr. Chambers: No.

Mr. O'Brien: There is—

The Master: I am asking Mr. Chambers.

Mr. Chambers: I think if it was the subject of 10928
a written contract we should have that.

The Master: I am asking him now for his knowledge, I am asking him does he know what the price was in January, 1918, for Williams & Peters?

Mr. Chambers: I don't think it is material in this case if they had a written contract for coal. That is what we are interested in, and then we can go into prices.

The Master: They have all been produced, they are here.

Mr. Chambers: They have not offered a single contract in evidence that I know of yet for coal, 10929
not a single piece of paper relating to contracts for coal that I know of. That is what we ought to clear up, the written contracts, and then we are out in the open as to what prices were if they didn't have a contract.

Q. Was there a contract with Williams & Peters in January, 1918?

A. There was not; the price was made by the United States government.

The Master: Now, you see there was no contract.

Mr. Chambers: Well, that is different, now you have cleared that up. I just want to show the way the case is being tried.

The Master: I am just going to edge you into a corner to answer my questions. Is there any objection now on your part to my inquiry of this witness, what was the price to Williams & Peters in January, 1918, per gross ton for coal?

Mr. Chambers: At the mines?

The Master: At the mines.

Mr. Chambers: I don't think of any now.

10931

The Master: Is there any objection on your part, Mr. O'Brien?

Mr. O'Brien: There is objection, your Honor. I want to say just at the outset, if you will take the last question asked the witness you will see where we are drifting. You asked the witness was there a contract?

The Master: Yes, and he said no.

Mr. O'Brien: In that answer he has taken the word "contract" to mean a written agreement.

The Master: Yes.

Mr. O'Brien: I met the same situation when I had a representative, Mr. Higgins, of the Standard Oil on the stand—

10932

The Master: I don't care anything about that.

Mr. O'Brien: I just want to illustrate—

The Master: I don't want you to illustrate. I am talking about a written contract, and that is what Mr. Chambers was talking about, because his point was that if there was a written contract it would be the best evidence.

Mr. Chambers: If there is any contract we want that.

The Master: If there is an oral contract you can't get it.

Mr. O'Brien: The witness can at least state as a beginning that they entered into an agreement, orally, over the telephone, or by the deaf and dumb language, with Williams & Peters to deliver coal at the price fixed by the United States Fuel Commission, and then proceed to give us the schedule for the Fuel Commission, and th n we have something in orderly form.

The Master: Is that your objection to my question?

Mr. O'Brien: That is one of the objections.

The Master: Have you another? 10934

Mr. O'Brien: To illustrate the objection I have in my mind to this particular form of proof—

The Master: What particular form of proof?

Mr. O'Brien: This particular form now, showing the prices put on this schedule.

The Master: I am not talking about a schedule.

Mr. O'Brien: Your are trying to argue—

The Master: I am not trying to argue anything. I am asking the witness what the price at the mines was in 1918.

Mr. O'Brien: You are asking the witness these questions to show the admissibility of this paper.

The Master: Forget that. 10935

Mr. O'Brien: If I could hand this witness, or one of my own the record of the proceedings that went down to the basis of these coal prices, which I have in my possession, the senatorial investigation into these prices, would the objection lie in Judge Rav m to the admission of that document?

The Master: I am not going to discuss that. I am asking you now whether you have any objection to a question I put to this witness as to

how much was the price per gross ton at the mines by Williams & Peters in January, 1918. That is what I want to know.

Mr. O'Brien: I will object to it as to form, because it is not definite. Secondly, I will object to if for the reason that there has not been shown to be an agreement between Williams & Peters and the complainant company to deliver coal, and nothing to show the conditions under which it is to be delivered. If they laid the basis of that the question might not be as objectionable as it
10937 is. I know Williams & Peters made arrangements to deliver as much coal as they could.

The Master: State your objection.

Mr. O'Brien: My objection is that it is incompetent, irrelevant and immaterial. You are asking the witness what the price was at the mine and not what the company agreed to have Williams & Peters deliver coal to the complainant company for.

The Master: Did you state all your objections, Mr. Chambers?

Mr. Chambers: My objection is the same.

The Master: Objection overruled. What was
10938 the price per ton at the mine in January, 1918?

The Witness: Of Williams & Peters?

The Master: Yes.

The Witness: $4.90.

By the Master:

Q. What was the insurance rate in that month?

A. It is one and a half per cent—a quarter of one per cent, I meant to say.

Q. Indicating what, in money?

A. One and a fraction cents.

Q. .01225?

A. Yes.

Q. What was the railroad freight per ton?

A. $1.45.

Q. And the water freight?

A. Twenty cents.

Q. What was the war tax?

A. Three per cent on railroad and water freight.

Q. Making how much?

A. .0495.

Q. Total alongside was how much?

A. $6.61175.

Q. This schedule that has been handed me by Judge 10940
Ransom shows these figures as you have just given them to me?

A. Yes.

Mr. O'Brien: But, your Honor, he has read them right off of a copy that Judge Ransom has handed you.

The Master: I know he has.

Mr. O'Brien: Naturally he would. The witness does not know these figures and he has not given us a bit of testimony yet except from something that he has before him.

The Master: I have always complained in a 10941
trial in court when a witness has a paper from which he will testify under oath, that the Judge puts me to the trouble that you want to put Judge Ransom to now.

Mr. O'Brien: My objections, your Honor, will go not only to this paper, but I am going to insist that $15,000 paid to the witness ought never to be paid and never ought to be allowed; that he is not a necessary employee of the company. That is provable, because he does not know anything about these prices.

10942 Lewis B. Gawtry, Cross.

The Master: Do not let us talk about that now.

Q. If I repeat the same questions for the months since January, 1918, you will read off the same figures from this memorandum?

A. Yes, sir. I cannot remember them.

Q. And you will testify that they are of your knowledge?

A. Yes.

Q. The same as to the other coal companies?

A. Exactly.

10943 Q. And all this is spread out on the schedule?

A. It is.

The Master: This schedule is offered in evidence as a short way of taking this witness's testimony of his knowledge under oath as to the facts contained in them, instead of asking the witness as to each company, each month and each item. What is your objection to that offer?

Mr. Chambers: Has he not testified substantially to this heretofore?

The Master: I do not know. A request was made either by you, Mr. Chambers, or by Mr. O'Brien for this kind of information. Whether

10944 it was covered or not, for the convenience of the Court, unless some objection be pointed out by counsel that has not occurred to me, I am going to take this tabulation as a quick method of getting the testimony of this witness on all these points. I will listen to any objection that you have to make.

Mr. Chambers: I cannot see why it is necessary in any case to have a witness testify to a certain thing and then to supplement that by a self-serving declaration that here it is in writing.

The Master: That is the point of your objection then?

Mr. Chambers: Down at the bottom here it says after the star "Authorized April 15th, 1918, by the United States Fuel Administration."

The Master: He so testified. That is the fact he testified to.

Mr. Chambers: There is no evidence of that.

The Master: Yes, there is. This witness is testifying to that fact under oath. Do I so understand it, Mr. Gawtry?

The Witness: Yes. 10946

Mr. Chambers: He does not know anything about that.

The Master: He said he does. I cannot look into this witness's mind when he says he knows it is raining outside. I do not know how he knows it, but he says he knows it.

Mr. Chambers: Then the further objection to this line of proof is that if this complainant had any arrangement with these companies whereby these companies were to furnish anthracite coal during these months in 1918, we should have that, and all other testimony should be eliminated, and not lumber up the record with extraneous proof like this. The only question your Honor is interested in, I take it, is what arrangement they had for purchasing coal, what was the price they paid; and then we have a right to challenge that, as to whether it was fair and reasonable or whether they were in cahoots with the mining companies or the wholesale coal dealers. If they had such an arrangement with these companies, Williams & Peters and others, either written or oral, for coal during these months, anthracite coal, then 10947

that is the best evidence and that is the only testimony we want on the subject.

The Master: That is your objection now?

Mr. Chambers: Yes. That has not been cleared up yet.

The Master: Now, Mr. O'Brien's objection.

Mr. O'Brien: Your Honor, I object to this first because the basis of the introduction of a paper of this kind has not been laid by the proof of agreements with the companies named herein, these being matters not covered by the written
10949 contracts for other years which were received in evidence yesterday. The basis has not been laid either by showing the oral agreements, telephone agreements, or secret agreements as to the price for coal, but the basis has further not been laid because the witness has stated that this is made up from a schedule of the United States Fuel Administration, private memoranda that he has, and the records in the company. Those papers are not yet in evidence, neither is the schedule of the United States Fuel Administration in evidence. Therefore, this is clearly inadmissible. On the
10950 further ground that the witness does not know anything of this subject, as shown by his testimony, except from the written papers that have been shown to him since he went on the stand There has not been one item of all the material purchase by the company, supplies, in the whole schedule of twenty-seven odd items, that he has been able to tell us the price of at any time. On the further ground that as to the agreements, if there were any, his private memoranda would be the best evidence; on the further ground that there has not been proof here as to the arrangements for railroad freight. There has not been any

proof here of the necessity of dealing in some instances, as they appear to have dealt, through brokers in New York City, giving them an operator's fee—some small operators, giving them a commission to deliver coal to this great big powerful company.

Those are my objections, and on the general ground that the foundation has not been laid, that this is inadmissible, and the general objection that I previously made in regard to almost all of these exhibits put in; that I object to proving a case of this importance with capsule evidence. 10952

The Master: The objection is overruled. The exhibits will be marked in evidence.

Mr. Clark: I join in those objections.

The Master: Those objections will be overruled, and it will be marked in evidence.

Marked Complainant's Exhibit No. 286, consisting of four sheets.

By Mr. Ransom:

Q. Mr. Gawtry, in the same manner in which you made up Exhibit No. 286 with regard to anthracite coal, have you made up a statement covering also bituminous coal within towing limits, month by month, for the year 1918? 10953

A. I have.

Q. So far as coal bought by and for the Consolidated Company is concerned?

A. Yes.

The Master: The trouble with your questions, Judge Ransom, is that you are asking him about a tabulation instead of asking him if he knows the information contained in it, and whether he testifies as a fact to that information, instead of asking each question.

Q. Do you know the various elements which went into the making up of the alongside price for bituminous coal bought by the Consolidated Gas Company through you in 1918?

A. I do.

Q. And have you from your records refreshed your recollection so that you could state each of those elements covering the gross ton price at the mines, railroad freight, water freight, alongside price, war tax and insurance?

A. I have.

10955 Mr. Ransom: I offer this statement as a tabulated form of his detailed testimony, covering the months in which bituminous coal was purchased.

The Master: No, you offer it as a quick method of asking him all the questions contained—each question which would seek to elicit the information set forth on this paper. That is what you are doing.

Mr. Ransom: Yes.

The Master: I will hear the objection to that.

Mr. Chambers: I make the same objection.

The Master: And Mr. O'Brien makes the same objection as to the last exhibit?

10956 Mr. O'Brien: The same objection.

The Master: Objection overruled. The paper will be marked. So we will be perfectly clear about it, Mr. Gawtry, I will ask you a question.

By the Master:

Q. Mr. Gawtry, you testified of your own knowledge that the facts which are set forth in the schedule which I am about to have marked as Exhibit No. 287 are facts of your knowledge?

A. They are.

Q. And if counsel were to ask you each question

with reference to each item, your answer would be as stated on this paper?

A. Exactly.

Q. In other words, I want to make it perfectly clear that you are swearing to these facts?

A. I do.

The Master: Now we will mark that.

Marked Complainant's Exhibit 287.

By Mr. Ransom:

Q. Mr. Gawtry, at the time you were previously on the stand you were interrogated regarding a table of comparisons of prices for materials, prices paid 10958
by the Consolidated Gas Company in 1913 and 1918. Since you were on the stand have you personally checked each of the computations, the percentages, showing the increases of 1918 over 1913?

A. I have.

Q. And you know those to be correct?

A. I do.

The Master: Is that a new schedule?

Mr. Ransom: No, that is one he had the other day. It is Exhibit No. 283 in relation to 1913 and 1918, with the percentages computed.

The Master: I took Exhibit 283 in, did I not, and marked it in evidence? 10959

Mr. Ransom: You did, yes.

The Master: And that includes these last two columns?

Mr. Ransom: It does.

The Master: Now you are proving the witness's knowledge as to those last two columns?

Mr. Ransom: No, the percentages. Exhibit No. 283 did not include the percentages.

The Master: Exhibit No. 283 is a different exhibit?

10960 Lewis B. Gawtry, Cross.

Mr. Ransom: Exhibit 283 showed it year by year.

The Master: I understand it.

Mr. Ransom: We are only proving the arithmetic.

The Master: I understand it. Is there any objection to this paper? That is practically supplementary to Exhibit 283.

Mr. Chambers: You mean it is just like it?

The Master: It is just like it as to 1913 and 1918, and carries into the last two columns the
10961 averages.

Mr. O'Brien: Of course this has the fatal objection that we made to the original paper, that the highest and lowest does not mean anything. They could go out to Thorne-Neae or Stokes or somebody else and buy some material at the top-notch price and boost up the average. That does not mean anything, the highest and lowest, and this comparison is not fair to the Court—to offer such comparisons.

The Master: I am not concerned about that especially. I think it is perfectly proper.

Mr. Chambers: It is incompetent in this case.
10962 It does not bear on the issues.

Mr. O'Brien: Did Mr. Macklin figure out these percentages or you?

The Master: He said he did.

The Witness: I did.

The Master: I would not let the paper in last week, or the week before, because the witness said he did not check them himself.

Mr. Clark: I object particularly on the ground that the highest and lowest prices are no evidence as to the increase in price.

The Master: The paper will be received. The objections are overruled.

Mr. Clark: My objection is the same objection as before, your Honor, to the original paper.

The Master: Objection overruled.

Mr. Clark: On the further ground here that these percentages as figured out are perfectly misleading.

Mr. Chambers: I make the same objection as heretofore.

Mr. O'Brien: Taking the comparisons of the high and low for a given period can have no 10964
fair, honest, good-faith purpose for the Court.

The Master: They will not mislead long, Mr. O'Brien, because if the fact develops by your witness or other witnesses that the range of prices during these years was substantially different than those shown on these schedules, the Court will not be mislead by schedules which show the high and low.

Mr. O'Brien: Can you not see, your Honor, right here that I want you to understand my position in regard to that, and what I just stated about the unfairness of it. There has not been yet a positive statement made to the Court that 10965
the complainant is going to follow up the allegations they have made in the complaint and put in issue in this case the operating expenses for every year.

The Master: They have put in the operating expenses back to 1906.

Mr. O'Brien: What?

Mr. O'Brien: They have their operating expenses back to 1906 in evidence.

Mr. O'Brien: As I said to you when you re-

ceived that operating ledger in evidence, that would not be any good.

The Master: Why not?

Mr. O'Brien: They have to put all the books in and prove them all the same as they do the 1918.

The Master: I think their operating ledgers will be enough.

Mr. O'Brien: I will not stop to argue that.

The Master: All of these things are going to fall by the wayside, in my judgment.

10967 Mr. O'Brien: Let me finish the thought I had in mind. 1913 is not any good for purposes of comparison; it is not any good unless they are going to put in all the operating expenses for 1913.

The Master: I think it is some good.

Mr. O'Brien: It is not the precise proof you will require in a rate case.

The Master: We will have precise proof before we get through.

The paper offered was marked Complainant's Exhibit 288.

By Mr. Ransom:

10968 Q. Mr. Gawtry, at the hearing when you were upon the stand before adjournment you were asked with respect to 1919 prices by Mr. Chambers and you gave in the case of certain items covered by Exhibits 283 and 287 certain figures which you described as mill prices paid by the Consolidated Gas Company purchasing department in 1919. Since that time have you ascertained from your vouchers and orders put through your purchasing department information regarding 1919 prices for these various articles and materials delivered?

10969

A. I have.

By the Master:

Q. In other words, do you know what the prices were for articles delivered?

A. I know by referring to the vouchers.

Q. Do you know?

A. I do.

Q. When you refer to the vouchers, does that carry anything to your mind; do you know it then?

A. Yes. I cannot carry a thousand or thirty thousand prices in my head.

10970

Q. What I am getting at, there is a little bit of mystery about these questions put to witnesses, and the complications of Judges and Courts and lawyers getting around them. You have to deal with these prices day in and day out?

A. Yes.

Q. You do not carry them in your head?

A. I do not.

Q. When you look at a voucher, that refreshes your recollection, and you are able to say on your oath that you know that is what you paid for it?

A. I probably check it with some information I have.

10971

Q. And after you look at these things, you are able to say that is the fact?

A. I can.

Q. You knew that is the facts contained on the schedule Mr. Ransom has in his hand?

A. Yes.

Q. Of course, counsel for the other side always have a right to bring out on cross-examination that you do not know that?

A. I know that.

Q. But the only question now on direct is, do you

know that, and if you say you do know it, I am going to have you say what you know.

By Mr. Ransom:

Q. In this column which is headed "Price as of March, 1919," have you put down there the price for any of these materials by the Consolidated Gas Company at that time, March, 1919?

A. Yes.

Q. And that column represents the price paid at that time by the company?

10973 A. It does.

Q. With the exception of certain instances, where no purchase was made at that time?

A. Right.

Q. Now, in the column "Price as of September 25, 1919," what is that?

A. Prices paid by the Consolidated during—prices paid or purchased at that time, as of September 25.

Q. And the last column, is the column—well, is the column "Prices of September 25" in all instances the prices actually paid, or is that in any instance a quoted price?

10974 A. In some instance the quoted price, because the bill for goods delivered September 25th has not yet been paid.

Q. Where you had no price as of that date, you did, by telephone or otherwise, obtain telephone quotations?

A. We did.

The Master: By yourself?

The Witness: The purchasing department, not by myself individually.

Q. And did you obtain written quotations?

A. Written or telephone.

Q. And in the third column, does that show the price last actually paid by the company in 1919, wherever that was paid?

A. It does.

Mr. Ransom: I think that shows the trend of prices during 1919, and refutes the claim which was endeavored to be supported on cross-examination at that hearing, that there had been some general decline in prices during 1919.

The Master: Well, I don't think—the trouble with that paper is that as to some matters on it, Mr. Gawtry does not know about it. The 10976
quotations that came over the telephone to somebody in the purchasing department, not to him, he cannot very well testify to.

Mr. O'Brien: I was going to say, your Honor, that what it really amounts to is an interpretation of testimony given and testimony not given, and that is really the objectionable feature, it is a coloring process applied to testimony, and not designed in good faith to aid the Court, but to fool the Court.

The Master: The 1913 is the same as we have already.

Mr. Ransom: Yes. 10977

The Master: 1918 is the same.

Mr. Ransom: Yes.

The Master: The prices of March, 1919.

Mr. Ransom: He knows all of those.

By the Master:

Q. He knows those, do you?

A. I do.

Q. And the last price actually paid, you know?

A. I do.

Q. As to some of the items under September 26th,

10978 Lewis B. Gawtry, Cross.

you are taking them from statements given you by your man?

A. I have seen the quotations or memorandum of the telephone prices submitted.

Q. Yes, but not to you?

A. To the purchasing department.

The Master: I will let you have the witness read into the record the column "Prices of March, 1919," and "Prices last paid," but I won't let him put in as of September 25th.

10979 Mr. O'Brien: I have not seen the paper yet, your Honor, but we record an objection to the introduction of the column.

The Master: I am not going to receive the paper. Judge Ransom will have to ask another question. If he does not have in mind just what I am trying to convey, the question ought to be, "Will you please state the price as of March, 1919, for the various items on this schedule."

Mr. Ransom: Will you take that column, "Prices of September 25, 1919," subject to correction?

The Master: No, I would rather not. I don't see how this witness can qualify at all on that.

10980 Mr. Ransom: Well, I could do this; I could simply hold—have this marked for identification and hold it in reserve and make the offer after I have completed the connection.

The Master: Yes, you can do that.

Mr. Ransom: I will do that.

The Master: Now, let us get this right.

By the Master:

Q. Can you tell which of the items on September 25th you know about yourself?

A. I cannot exactly.

Q. Could Mr. Macklin testify?

A. I think he could.

The Master: Well, mark it for identification.

The paper was marked Complainant's Exhibit No. 289 for identification.

The Master: I think you ought to have the witness testify to the two columns.

Mr. Ransom: I was going to offer this copy to the two counsel, so that they could follow it.

The Master: Have the witness in substance testify to those two columns now, put his testimony in, then when you get Mr. Macklin's testi- 10982
mony as to the other columns, I will let you offer it as a tabulation.

Mr. Ransom: Yes.

The Master: Give the stenographer a copy of this, and he can copy it off. Mr. Gawtry can do what they do in the Legislature, have a short reading of it, read the first and last items.

By Mr. Ransom:

Q. Mr. Gawtry, will you read into the record as to each of those twenty-seven items of material and supplies—

The Master: No, don't put it that way. Please state— 10983

Q. Please state as to each of those twenty-seven items of materials and supplies, the price as of March, 1919, and the price actually paid by your purchasing department in 1919.

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. I have not seen the paper yet. It would have been a good form to give us a copy before we had this record filled with a lot of questions and answers, but I have heard enough to warrant me in making an objection at this time to it being admitted, if we are

proceeding to put in here in order to show the wisdom on the part of the purchasing department prices actually paid and prices they got over the telephone, quoted, I think it is altogether improper.

The Master: Mr. O'Brien, you have in your hand a copy of a paper—

Mr. O'Brien: I just received it, your Honor, yes.

The Master: Now, wait a minute. I am permitting counsel for the complainant to ask the
10985 witness with reference to the third from the last column to the right, and the last column to the right, not the second to the last column to the right, because he is not able to testify of his own knowledge about that. Now, he is asked to state the figures that he knows about. The question in substance is, state the price paid in March, 1919, and the last price actually paid for these various articles. Now, that is a question asking for an oral statement of the witness. Is there any objection to that? If so, please state it.

Mr. O'Brien: My objection is, your Honor,
10986 the basic objection is that the best evidence of the price paid would be the contracts where there were contracts, the vouchers, or the bills of lading where there were any.

Now, more than that, over and above that, my objection to it, he is not giving here on the exhibit the quantities purchased, the conditions under which they were purchased and the times purchased, that the whole thing is not fair with the Court. It is a study of figures, it is jugglery of statistics which is not in good faith.

Now, for all we know, where there perhaps has been an increase of say twenty cents in the

price of a certain material, there might not have been five dollars' worth of that material bought. As to the big item, oil, that he is ringing in on this paper, the witness stated that he doesn't know anything about oil, that you would have to call Mr. Addicks, and why should this be received? Why should it not be eliminated? Your Honor, the prices should be averaged, the weighted averages are the things, so that if you pick out the price as of March, 1919, in that column, and then the price actually paid, in order to get the situation, you ought to have the 10988
whole story, and the amount of material bought, the conditions under which it was bought, the necessity of buying it at that particular time when the market might be higher than it would be the next day or the next month. All of these things come in. The foundation has not been laid here. As I said before, there has not been one item of these twenty-seven items of material purchased that the witness can tell us of his own knowledge that he knew the figure as of any date in his whole career. So, I say he is an incompetent witness, and therefore anything prepared by him like that paper is incompetent, 10989
irrelevant and immaterial.

The Master: Do you join in those objections, Mr. Chambers?

Mr. Chambers: I do.

The Master: Do you join in those objections, Mr. Clark?

Mr. Clark: I do.

The Master: Objection overruled, with an exception. Give us that information.

Mr. O'Brien: I call your Honor's attention particularly to the item that has an asterisk, cast

iron pipe, with a note below, 1918, contract. That contract has not been offered in evidence.

The Master: We haven't got the statement yet. I am not taking any asterisks.

Mr. O'Brien: I thought you were taking the third last column and the last.

The Master: I am not taking asterisks, I am asking his oral statement as to the price.

Mr. O'Brien: My objection is further that the contract is the best evidence of the price.

The Master: That is another matter. Give us that information.

		Price as of March, 1919
Anthracite Coal—Broken	Per Gross Ton	$8.319
Bituminous Coal 3/4" Screened	" " "	5.899
Buckwheat Coal No. 2	" " "	(No purchas
Gas Oil	Per Gallon	.075824
Wrought Iron Pipe 3/4" to 1 1/2"	Per Foot	30.5%
Steel Pipe 3/4" to 3"	" "	49%
Iron Oxide—Sponge	Per Bushel	.215
Red Lead—Atlantic	Per Pound	(No purchas
White Lead—Atlantic	" "	.117
Linseed Oil—Boiled	Per Gallon	1.57
Gas Holder Paint	" "	1.14
Cast Iron Pipe—AG1 Std	Per Net Ton	(No purchas
Cast Iron Fittings—AG1 Std	Per Pound	.0625
Iron Castings	" "	.065
Steel Bars—3/4" to 3"	Per Cwt.	3.97
Iron Bars—3/4" to 3"	" "	4.17
Brass Castings	Per Pound	.33
Fireclay Shapes	Per Net Ton	21.35
9" Firebrick	Per M Pieces	51.50
Checkerbrick	" " "	51.50
Lumber—2" x 9" Spruce, Rough	Per M. Feet	57.00
Portland Cement—4 bags to bbl.	Per Bbl.	3.80

Red Building Brick	Per M Pieces	17.85
Malleable Iron Fittings	Per Pound	+12.5—15%
Pipe Lead	" "	.0575
Gas Meters—5 Lt. Ordinary	Each	10.20
Gas Meters—5 Lt. Prepayment	"	13.95

The Master: Now, give us the last prices paid.

The Witness:

		Price Last Actually Paid, 1919
Anthracite Coal—Broken	Per Gross Ton	$8.2901
Bituminous Coal 3/4" Screened	" " "	5.95505
Buckwheat Coal No. 2	" " "	5.104
Gas Oil	Per Gallon	.061082
Wrought Iron Pipe 3/4" to 1 1/2"	Per Foot	31%
Steel Pipe 3/4" to 3"	" "	55%
Iron Oxide—Sponge	Per Bushel	.215
Red Lead—Atlantic	Per Pound	.117
White Lead—Atlantic	" "	.117
Linseed Oil—Boiled	Per Gallon	2.20
Gas Holder Paint	" "	1.60
Cast Iron Pipe—AG1 Std	Per Net Ton	49.00
Cast Iron Fittings—AG1 Std	Per Pound	.0725
Iron Castings	" "	.0575
Steel Bars—3/4" to 3"	Per Cwt.	3.37
Iron Bars—3/4" to 3"	" "	3.37
Brass Castings	Per Pound	.36
Fireclay Shapes	Per Net Ton	21.35
9" Firebrick	Per M Pieces	51.50
Checkerbrick	" " "	51.50
Lumber—2" x 9" Spruce, Rough	Per M Feet	69.23
Portland Cement—4 bags to bbl.	Per Bbl.	3.25
Red Building Brick	Per M Pieces	18.15
Malleable Iron Fittings	Per Pound	+12.5—15%
Pig Lead	" "	.0665
Gas Meters—5 Lt. Ordinary	Each	10.20
Gas Meters—5 Lt. Prepayment	"	13.95

10996 Lewis B. Gawtry, Cross.

By the Master:

Q. Were any of these prices that you have just read, the last prices under any outstanding contract?

A. They were.

Q. Which of them?

A. Anthracite coal, bituminous coal, gas oil, cast iron pipe, cast iron fittings, firebrick, checkerbrick, fireclay shapes.

Q. They were under contracts?

A. Yes.

10997 Q. Was there any old contract referring to any one of them?

A. For cast iron pipe, there was, 1918.

Q. A contract made in 1918?

A. Yes.

Q. With whom?

A. United States Cast Iron Pipe & Foundry Company.

Q. Have you got that with you?

A. No.

By Mr. Ransom:

Q. The other contracts were 1919 contracts?

A. They were 1919 contracts.

10998 Mr. O'Brien: I renew my objection as to the testimony of the witness, asking that it be stricken out and this exhibit eliminated from the record, on the further ground that it now appears that a great many of these items were bought pursuant to contract, and those contracts have not been produced and offered in evidence.

The Court: There is no exhibit in evidence.

The Master: There is no exhibit in evidence.

Mr. O'Brien: The objection lies just the same.

The Master: Your objection lies to the oral testimony of this witness?

Mr. O'Brien: Yes.

The Master: Motion denied, exception. Is there anything else you want to ask the witness?

Mr. O'Brien: He has been allowed to testify about matters that he declared positively he knew nothing about, the oil contract. The last prices actually paid might be on something that was not the last article of that kind purchased.

The Master: That is right.

Mr. O'Brien: The whole thing is misleading.

The Master: That may be, but it is your duty 11000
to see that I am not misled when the testimony is disclosed.

Q. Mr. Gawtry, for how long a time has it been the practice for the purchasing agent, or the purchasing department of other gas companies to consult you before making purchases of materials and technical supplies?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. There is no evidence in the case that other gas companies have consulted the witness.

The Master: How is the question important?

Mr. Ransom: I want to show that this is 11001
rather a recent thing which arose out of war conditions.

The Master: All right, I will allow it. The objection is overruled, with an exception.

A. A little over a year.

Mr. O'Brien: Does counsel refer to the affiliated companies now?

Mr. Ransom: I refer to the affiliated companies.

The Master: Yes. The witness testified that other companies conferred with him, and that

11002 Lewis B. Gawtry, Cross.

he had purchased for the other companies in some form, and counsel for the complainant has just brought out that that is a recent thing? Within a year or so. That was not the practice theretofore?

The Witness: No, it was a war measure.

Q. And it has been continued?

Mr. O'Brien: You have changed your mind since yesterday on that subject, haven't you?

The Master: You need not answer that question. Mr. O'Brien's time for cross-examination has not yet arrived.

11003

Q. Have you considered that as to coal, pipes, and so on, there are advantages and economies to the Consolidated Gas Company in combining the orders of other companies with the orders of the Consolidated?

Mr. O'Brien: I object to that as inadmissible, as calling for a conclusion of the witness.

The Master: I will sustain the objection.

Mr. Ransom: I think we are entitled to show—

The Master: I am entitled to draw my own inferences. He has testified enough not to permit the Court to draw its own inferences.

11004

Q. Do you know as an officer of this Company what reasons actuated or dictated the beginning of this practice?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection sustained, because the witness has already testified it was a war measure.

Q. What advantages to the Consolidated Gas Company are, or were deemed to accrue by reason of this relationship to the purchases of other companies?

Mr. O'Brien: I object to that.

Mr. Chambers: I object to that also.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Mr. Gawtry, is it your opinion that taking these twenty-seven principal supplies and materials shown on the exhibit offered in evidence, the market price will be generally higher or lower in 1920 than in 1918 and 1919?

Mr. O'Brien: I can't see why counsel puts out these questions. He knows from his experience as a jurist, as well as a representative of the 11006
Public Service Commission, that they are inadmissible.

Mr. Ransom: Here is one of the best authorities—

Mr. Chambers: Let us state our objections.

The Master: Please wait. Are you claiming that this witness cannot give opinion evidence on that subject?

Mr. Chambers: I want to object to it—

The Master: Your objection is that it is not a matter of opinion evidence?

Mr. O'Brien: That is one of the many objections. 11007

The Master: Give us the rest of them.

Mr. O'Brien: I don't want to take up the Court's time, but there are many.

The Master: I am against you. Give me the others.

Mr. O'Brien: The witness has not been qualified as an expert on anything. He didn't show even a knowledge of the purchase prices.

The Master: I want to be perfectly fair with you. I have indicated, in fact I have stated

that I am against you on the point that it is not a proper matter for opinion evidence. I am likewise against you on the point that this witness is not qualified to testify. A man who has been purchasing material for twenty years is competent to give his opinion as to what the trend of prices will be next year. If he is of the opinion that prices are going up the next year he should lay in supplies, and if he is of the opinion that they are not going up, or are going down, he should run close to the line and
11009 wait until the market comes back.

Mr. O'Brien: If this was something that he saw ahead, looking toward the future, something that was prospective, in the line of providential work on his part, it certainly could not be admissible.

The Master: You can state all your objections now, because I am against you on the two points you have already stated.

Mr. O'Brien: The man is not an astronomer or seer, he can't read it in the cards.

The Master: No more than any expert.

Mr. O'Brien: I never heard of an expert be-
11010 ing asked what he thought the future was going to bring forth.

The Master: You have heard it now.

Mr. O'Brien: Your Honor has already declared what your conviction is as to the future and the present.

The Master: That is only my opinion. It may not be worth powder to blow it around the corner.

Mr. O'Brien: You are going into the realm of speculation. You will have to ask him what

11011

the basis of his opinion is, and we will begin to get his dreams, his nightmares.

The Master: I am not going to decide this case on my opinion as to the course of future events, but I am going to decide it on proof.

Mr. Chambers: I object to the question upon the ground that the issue before the Court here as framed by the pleadings is that this company claims that it has not enjoyed a fair return under the statutory rates for the years past, and we are not concerned with the future. That is the question your Honor has got to decide.

11012

The Master: I think you are right about that.

Mr. Chambers: And so far as we are able to find, the courts have never, in a rate or confiscation case, decided it on what the future might have in store.

The Master: I will tell you what I think about that, Mr. Chambers.

Mr. Ransom: May I say a word on that?

The Master: No, it is not necessary.

Mr. Chambers: It is just a case of speculation, and your Honor can guess just as well as the witness.

11013

The Master: I have heard you—

Mr. O'Brien: I object to your Honor letting this thing go in the record. Let us have a little pride in the case and get it right. This will stand the proceeding—well, I won't express myself.

The Master: I am not at all worried as to what anybody says about the proceedings. I am not concerned about whether counsel for one side or the other says it is properly or expeditiously conducted. I am going to decide these questions as they appeal to my judgment and my conscience.

I was about to explain that in my judgment, Mr. Chambers' statement, generally speaking, the complaint is that they have not been able to get a fair return, is correct. The proof, however, on the part of the complainant, is in support of that contention, and it is within the realm of possibility at least, and I anticipate in all likelihood that counsel for the defendants will contend that the prices existing for the last year or two are no criterion, because the war is over and prices will recede. Now, I think that bearing on that, possibly not bearing at all on the ultimate issue when
11015 I come to it, it is proper to take expert testimony as to what the present trend of prices is, and to what the experts' opinion is on that point. I am likewise of opinion that Mr. Gawtry is an expert qualified to state as his opinion that prices are going to keep where they are, or going up. I am, therefore going to overrule these objections in spite of Mr. O'Brien's anxiety that I shall not degrade this case, and I will allow the question and an exception.

Mr. O'Brien: Exception.

The Master: Answer the question.

11016 The Witness: May I have the question read?

Mr. O'Brien: Is this question asked to justify present day prices?

The Master: No, it is asked in anticipation of a contention that may be made that the present prices will undoubtedly recede after this year.

Mr. Ransom: And also, we ask a decree for the future. Equity speaks not as of the date of the formulation of a bill of complaint, but of the present and the future.

The Master: I do not agree with you altogether about that. I think Mr. Chambers has put his finger on the point.

Mr. O'Brien: The door of equity is open in the future as well as the present.

The Master: If you are not able to establish that the fact is and has been that this rate is confiscatory, I would, of course, ignore and refuse to receive any evidence as to what might happen in the future.

Mr. Ransom: Correct.

The Master: Just as the United States Supreme Court said in the original case, you have not shown us now that it is in fact confiscatory, and I am not going to guess about the future. If 11018
in this case you show that it has in fact been confiscatory and is confiscatory, I think it bears somewhat on the possibility that it will continue to be so. The United States Supreme Court may very well say, having in mind some evidence that may come into this case, that it is quite true that it has been temporarily confiscatory, but that it is a temporary condition. I think there should be some proof that it is likely to continue.

Mr. O'Brien: Your Honor will see where you are leading, when I call your attention to the line of inquiry that will be opened up as to the contingent fund, the fund created by this com- 11019
pany in other days to take care of war, and to take care of just what they are going through.

The Master: Yes.

Mr. O'Brien: That is going to open up a lot of questions.

The Master: Yes, and that is what I am here for.

Mr. O'Brien: If this man in charge of the purchasing department is vested with that expert knowledge to prognosticate the future, why didn't he do that five years ago, and make all kinds of

contracts to save this company during the war time?

The Master: That bears largely on what his judgment is worth in the future, as to what he did in the past. I think Patrick Henry said that one time wasn't it?

Mr. O'Brien: I don't seem to make much headway here as a reformer. I will record my objection again and sit down.

(Question read to witness as follows: Q. Mr. Gawtry, is it your opinion that taking these 27
11021 principal supplies and the materials shown on the exhibit offered in evidence, the market price will be generally higher or lower in 1920 than in 1918 and 1919?)

Mr. Chambers: I would like to add to my objection that this question includes oil, about which he knows nothing.

The Master: Yes, I think you are right about that. You will have to exclude that.

Mr. O'Brien: Take the curve that shows the history of the prices of pipe, for instance, it runs quite contrary to other lines of materials, and unless the witness goes into detail, the testimony
11022 would be valueless, even if it was admissible.

The Master: I will take it. You will have to exclude oil.

Mr. Ransom: I have excluded oil.

A. My impression is there will not be a reduction in general prices in the next three years—

Mr. Chambers: I don't like to interrupt you, but you were asked for your opinion. You are giving your impression.

The Master: There again we meet the situation that I have so often adverted to, that lay witnesses are not so keen to use the exact langu-

age. When you say it is your impression, is it your opinion?

The Witness: I would like to change the word "impression" to "opinion."

The Master: When you said "impression" you meant "opinion"?

The Witness: I did.

Mr. O'Brien: Well, it is not a conviction, anyway, is it? It is an opinion?

The Master: One minute. You can have your chance for cross-examination, Mr. O'Brien.

Mr. O'Brien: Well, that ladylike term "im- 11024
pression," makes me think the witness doesn't really give full assent to it.

The Master: Now, that is his opinion, he has stated.

The Witness: It is my opinion that there will not be a reduction of prices in the next two or three years.

Mr. Clark: I move to strike out the answer as not responsive. The question was as to 1920.

The Master: It is inclusive of 1920. I will allow it to stand.

A. (Continued.) The demands for raw material, the demands of higher prices, higher wages on the 11025
part of labor, the non-efficiency of labor—

The Master: You mean by that the shortening of hours and lack of production?

The Witness: The shortening of hours and lack of production from men in different trades, is low—all tend to prices that will be higher.

Mr. O'Brien: I move to strike out the testimony of the witness on the ground that he has not been shown to be an expert, and on the further ground that the opinion as given is based on allegations not proven in this case, and which do not appear in the record.

The Master: Motion denied.

Mr. O'Brien: Exception.

The Master: Have you anything else to ask, Judge Ransom?

Mr. Ransom: That is all.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Now, I take it that your answers to these last two or three questions in regard to prices in the future, related to all the 27 items on this sheet, with the single exception of oil, because you made no differentiation between the different items?

11027 A. That is so.

Q. For every single item on this sheet, 26 of them now, with oil excluded, you say the prices are going up and up and up. You do not say when they will stop, did you? Is that correct? They are going up and up and up?

A. No, they won't go up forever.

Q. When are they going to tumble?

A. I don't know.

Q. Nobody knows about that?

A. Nobody knows.

Q. It may be in November, may it not, 1919?

A. It may be.

11028 Q. Yes, and it might be a couple of weeks from now, for all we know, may it not?

A. Yes.

Q. And when they do tumble, they will smash, isn't that your idea about it?

A. Not necessarily. I think there is so much work to be done in this country that prices may, should they tumble, will not tumble very far.

Q. Have you taken into consideration competition abroad?

A. I have.

Q. Upon what do you base your opinion that these

prices are going up continuously during 1919, and say, 1920? Now, tell us the basis—

The Master: I don't think the witness said they were going to continue going up until 1920.

Mr. Ransom: He said the general level would be higher.

Mr. Chambers: If counsel will concede he said they will not go up, I will not ask him anything more about it.

The Master: I don't think there is anything to concede about it. The impression the witness's testimony made on me was that the stock would 11030
not be cheaper in the next two or three years.

The Witness: That is my impression. I do not think it will be any cheaper. I think it will be higher.

Q. Then I correctly represented you when I said it would go up. If they will be higher, they will have to go up?

A. Yes, but there will be a limit to where they will go.

Q. Well, when will the limit be reached? A. I don't know.

Q. That is as uncertain as anything can be, isn't it?

A. Absolutely uncertain. 11031

Q. And you haven't any idea in your mind when that will be?

A. No.

Q. You don't want to venture a guess on that, do you?

A. I do not.

Q. Now, upon that—give me the basis of your opinion that prices will ascend in the future?

A. Taking as a concrete example, coal. You saw what was done by the anthracite miners a few days ago, day before yesterday. They agreed to stay at the same wages until the 31st of next March, and

11032 Lewis B. Gawtry, Cross.

after that they expect an increase and will probably get it. The bituminous miners meet the first of November. They have asked for a sixty per cent increase, a six-hour day and five days a week. That does not mean lower prices; it means very much higher prices in their product. They may not secure a sixty per cent increase, but in all probability they will secure a thirty or forty per cent increase.

Q. Do you know why they are asking for an increase?

A. Do I know why? Only because—

11033 Q. Isn't it because the price of food stuffs and the necessities of life are higher?

A. That is right.

Q. You haven't any idea those are going to continue to climb, have you?

Mr. O'Brien: Oh, he is not an expert on that.

A. I don't see them coming down very much.

Q. Isn't it a fact they are coming down now?

A. I have not discovered it in my personal bills.

Q. You have not looked into that very much?

A. Not very much in detail.

Q. Have you looked into the reports of Bradstreet's and Dun's on that point of necessaries?

11034 A. On foodstuffs.

Q. Yes, and clothing.

The Master: Do you keep house?

The Witness: Yes.

The Master: Do you support a family?

The Witness: Yes.

The Master: Pay supply bills?

The Witness: Mrs. Gawtry pays the bills.

The Master: Do you believe the reports of Bradstreet's and Dun's when you look at your bills?

The Witness: I have not seen any evidence yet; I would like to find it.

The Master: I don't believe much of these reports I read in the newspapers, when I see my supply bills.

Mr. O'Brien: Did you buy any eggs from the city market?

The Master: Mr. Chambers has the floor, Mr. O'Brien.

The Witness: I bought two at the Hotel Belmont this morning and paid a pretty high price for them.

The Master: I imagine a good many men have the experience I have, when you try to buy 11036
cheaper eggs, you can't eat them.

Q. You haven't any doubt but there is profiteering abroad, have you?

The Master: I don't think we need go into that. There is profiteering all over the world just now.

Mr. Chambers: Well, your Honor objects to it and rules it out?

The Master: Yes; I will take judicial notice of it, that everybody is profiteering or trying to.

Q. Then all the basis of your opinion is the fact that the miners of anthracite are going to ask for a raise in March, 1920, and the miners of bituminous 11037
are going to ask for a raise in November. Is that the sole basis of your opinion?

A. No; I gave those as two concrete examples.

Q. Well, what else?

A. My opinion is based generally on the study of prices from all angles and talking with a great many manufacturers and talking with a great many purchasers and talking with a great many people selling all kinds of materials, and talking with bankers, and talking with the money end of it, and talking with the railroad people who have done no work, prac-

tically, in building up and maintaining their roads, for many years, and where most people come into the market when they can, when they have funds for it, they will have to spend millions and millions of dollars for iron and steel and everything which is used to build up their roads.

The Master: Brick?

The Witness: Yes.

The Master: Paint?

The Witness: Yes. There has been no construction of buildings or houses in the large
11039 cities in the last few years. New York City has grown almost nothing. When people begin building, there will be a tremendous demand for those things. I do not think that tends toward lower prices.

Q. That tends to lower prices?

A. I do not think it tends toward lower prices.

Q. Why is it that the price of wrought iron pipe is lower than it was in March, 1919, if your theory is correct?

A. Prices will vary from day to day and from month to month. I cannot tell why they vary; it is the supply and demand is the best answer, I presume.

11040 Q. Iron castings are lower than they were, according to your table, aren't they?

A. If that table shows that. I haven't it before me.

Q. Well, why is that?

A. I presume because of the supply and demand. The waterworks people, who are the largest users of iron castings, laying cast iron mains, have done very little work during the past two years, during the war.

Q. If you are right about future prices, why wouldn't that go up, that item?

A. Cast iron?

Q. Yes.

A. I think it will go up. I have every reason to believe so.

Q. It has gone down, according to the statement?

A. It may for a month or so go down and vary from month to month.

Q. Steel bars have gone down very materially?

A. Price fixed by agreement with the United States Government.

Q. You mean the United States Government lowered that between March and the present time? A. By arrangement with the manufacturers, the steel 11042 operators.

Q. Well, then, the prices were lowered for some reason or other?

A. They were.

Q. By consent?

A. By consent.

Q. Iron bars are down materially, are they not?

A. The same thing applies.

Q. What?

A. The same thing applied there, iron and steel.

Q. I see a tremendous drop in iron bars.

A. How much?

Q. From 4.17 to 3.37. That is a big drop? 11043

A. Yes.

Q. That is just since March?

A. Yes.

Q. And I see further, if you will look at this sheet, that that is a tremendous big drop from 1918 prices.

Mr. Ransom: I call the Master's attention to the fact that the prices to which the witness's attention is being directed are the prices as of September 25, 1919. Now, I am very glad to have them in evidence, but if it is being put in evidence as to the instances in which there are re-

ductions I also want it to go in as to instances in which there are increases.

Mr. Chambers: Counsel is incorrect in his statement.

The Master: You are going to get it through Mr. Macklin anyhow.

Mr. Chambers: There is not prices of September 25th, 1919.

The Master: Do not argue that.

Q. I am asking you to take steel bars and iron bars and iron castings. They are all down, are they not?

11045

A. Yes.

Q. And they are away below 1918 prices?

A. Away below what 1918 price?

Q. The price here.

A. The highest, yes.

Q. And away below your lowest, too?

A. Yes.

Q. Either one. That is a big drop, and how do you explain it?

A. By the cessation of the war, the cessation of demand.

Q. So that at least I have found three very important items that are going down, and going down fast, because they have dropped—one of them here has dropped since March to the present moment from $3.97 to $3.37 and one from $4.17 to $3.37, have they not?

11046

A. They have.

Q. That does not quite coincide with your prophecy as to the future, does it?

Mr. Ransom: I object.

The Master: That objection is sustained on the ground it is argumentative. Just bring out the facts. We will argue the matter afterward.

Q. Checker brick, that is nearly $7—$6 and something lower than 1918 per thousand pieces, is it not?

Mr. Ransom: No decrease in 1919. In fact it is going up now.

Mr. Chambers: Counsel has misstated that.

Q. Counsel has misstated, has he not, when he says that is going up, according to your table?

A. Ask me that again. I did not have the paper when you asked me that question.

Q. Checkerbrick has gone down $7 about per thousand pieces since 1918?

A. From the highest in 1918. 11048

Q. How about the lowest?

A. The same thing.

Q. The highest and lowest are the same?

A. Has gone down $6 in price.

Q. Counsel stated a moment ago upon the record that that is going up——checkerbrick. You do not show it going up, do you?

A. This says the price last actually paid in 1918.

Q. You do not show it going up, do you, taking your figures?

A. These figures do not show they are going up or going down, they merely show the last price paid.

Q. You show it as $51.50 in March and $51.50 11049 now.

Mr. Ransom: That is not what it shows. It shows the price actually paid in March. If you want to see the price actually paid now, just ask him what it is.

Mr. Chambers: I am just taking his say so.

Mr. Ransom: Ask him what it is now.

The Witness: The price was $51.40 September 25th, 1919.

Q. I did not ask you that.

A. I thought you did. I beg your pardon.

Q. That column is stricken out. It has not moved a bit, according to your price last actually paid in 1919?

A. No, because that was purchased by contract. All of that checkerbrick may not be in. We may purchase some next January or next December.

Q. You have two or three prices in mind; that is, it is lower when by contract and higher when not?

A. The present price, on September 25th, was $54.40 that we received.

Q. Your whole list here is based on the prices sent
11051 out by the companies, is it not?

Mr. Ransom: I object to the question. It is not an accurate statement. There are two columns on this document on which counsel is cross-examining which represent actual prices.

Mr. Chambers: Why is this testimony material when the witness says that you can get the things materially lower when you buy on contract.

The Master: The next question, Mr. Chambers.

Q. Portland cement is lower than it was in 1918, is it not?

A. It is.

11052 Q. Lower than it was in March, 1919, isn't it?

A. It is.

Q. Pig lead is lower, is it not?

A. Pig lead is lower.

Q. Lower now than it was in 1918?

A. Quite right. It is higher than it was in March. If building starts all these prices will not go lower, in my opinion. They will go very much higher.

Q. The record does not seem to quite bear you out in your statement, does it?

The Master: The question is not allowed as argumentative.

Q. What are these percentages up here of wrought iron pipe and steel pipe?

Mr. Ransom: That has all been covered.

The Master: That is a discount from the list, is it not, Mr. Gawtry?

The Witness: Yes.

Q. That is to say, taking steel pipe in 1918 your discount was 37 from the list and now it is 53. That means that that has gone down?

A. Yes.

Q. Because the lower you have taken off from the list the lower your price is? 11054

A. That is right.

Q. That is quite a material decrease?

Mr. Ransom: You mean gone down from 1918 or when?

A. No.

Q. That is not quite a material decrease?

A. The steel pipe in 1918 was 37 off the list; the price last paid now is 53 off the list.

Q. That is a reduction in the price?

A. That is down, yes.

Q. Take wrought iron pipe in 1918. It was 25; and the highest was 17 and now it is 31?

A. Now it is 31 off. 11055

Q. That has gone down?

The Master: That is the last you paid was 31 off?

The Witness: The last we paid was 31 off.

The Master: That is not now.

The Witness: That may not be today.

Mr. Ransom: These items are higher now than they were in March.

Mr. Chambers: Judge Ransom, will you or will you not allow counsel to cross-examine the witness?

Mr. Ransom: I will not allow counsel to misrepresent the statements of the witness, if I can help it.

Mr. Chambers: Am I misrepresenting?

Q. The 31 cents off the list, the last discount you know of on wrought iron pipe was 31 cents right up to this minute?

A. 31 per cent.

Q. 31 per cent, wasn't it?

A. That is right.

The Master: No, that is the last that they

11057 paid.

Mr. Chambers: It is the last he knows about, too, isn't it?

The Master: No.

Mr. Chambers: Let us ask him.

The Master: He claims that in September, this last month, within the last week or two, the bid price or the quotations may have been higher or lower than that.

Q. What was it in September, 1919?

The Master: Now, you are going to get that column in evidence.

Mr. Chambers: No, I have to ask that now

11058 to show that that is not correct, your statement.

The Master: I do not know whether it is or not. But his statement is that that last column is what they last paid.

Q. Right down to the minute, what is the quotation on wrought iron pipe?

A. Right down to this minute, I do not know.

Q. Well, right down to yesterday.

A. I have not heard of any change.

Q. The 31st day of August, then?

A. 31 per cent.

Q. That is just the same as you have in the last column here?

A. Exactly.

Q. Pig lead is lower?

The Master: You have already covered pig lead.

Mr. Chambers: Did we?

The Master: Yes. You see, those columns show for themselves. I do not see that you get anywhere by asking the witness those questions. It is purely argumentative. Most of those questions are. He has testified to 1918 and he has testified to 1919.

Mr. Chambers: He testified to one thing, and 11060
here is his paper that shows it.

The Master: It is argumentative.

Mr. Chambers: It is good to get it in the record so the Court can see it.

The Master: It is in the record.

Q. Take these Exhibits 283, 288 and 289, you have on here an item of lumber 2 inches by 9 inches, spruce rough. Why did you take that peculiar size?

A. Because we used more of that than any other. It is used for scaffolding.

Q. Oh, you took that because your company used that peculiar size?

A. That is right. 11061

Q. You do not think that is any indication, do you, of spruce lumber generally?

A. The prices we take are the prices for materials that we use and not the prices that they may use in Brazil or somewhere else. The prices we use in our business.

Q. Mr. Gawtry, you gave the price of cast iron pipe of the A. G. I. standard. That is not the standard that this complainant used, is it?

A. That we used? It is.

Q. Did you not testify that you used a different standard?

A. I did not.

Q. Mr. Simpson said they did. Do you know what standard they use?

A. The A. G. I. standard, the American Gas Institute standard, yes.

Q. If there is any other standard used you did not know about it?

A. I do not think so. I know it.

Q. The prices you gave were for A. G. I. standard?

A. They were.

The Master: Is that pipe?

11063 The Witness: Cast iron pipe, yes. The American Gas Institute standard.

The Master: The thickness of the pipe, that is?

The Witness: The thickness of the pipe.

Q. The other day when I was asking you about Exhibit No. 283 you afterwards stated when counsel interrupted that those prices did not include delivery?

A. Certain prices did not include delivery that I gave.

Q. And I ask you about certain other prices. What was the difference between the prices stated on this exhibit as to delivery and the prices about which I was

11064 asking you?

A. All the prices on those sheets include delivery. The prices that I read from certain information taken from trade journals were mill prices without delivery; prices at the mill.

Q. The prices on all these sheets now include delivery at your plant?

A. They do.

Q. And when you purchase these 26 articles or commodities all these prices that you pay include the freight rates and the charges for transportation?

A. They do, the cost to us.

Q. These prices that I have been asking you about on Exhibit No. 285 for identification, where they are lower in 1919 than they were in 1918, those are delivered?

A. Delivered. All prices on that sheet are delivered, Mr. Chambers.

Q. These 26 items, as you say you know nothing about the oil, which ones do you use very much of? 11066

A. We use a good deal of all of them.

Q. A good deal of coal?

A. Yes.

The Master: I think all that has been fully covered. They have not used pipe recently because they have not been laying any new mains. Otherwise all of these things you use right along?

The Witness: All of them.

Q. Prices are going up, as you say they are, and how large a stock are you carrying of these various articles?

A. We have got a fair stock of some materials.

Q. To last you through 1920 and 1921? 11067

A. Oh, no.

Q. You have not looked into the future as far as that?

A. We could not store it.

Q. You could not store them?

A. No.

Q. Have you purchased enough to cover 1920 by contract?

A. 1920? Sixteen months from now? No, we have got a great many months ahead in a great many materials, though.

11068 Lewis B. Gawtry, Cross.

Q. For instance, how much of a supply of anthracite coal have you purchased? How long do your contracts for anthracite coal cover, looking into the future?

The Master: Mr. Chambers, what is the use of wasting time on that, when it is clear in the record that all these contracts are subject to variation when the cost at the mines goes up? It is a very common form of contract these days; it is a form of contract that is being generally used.

11069 Mr. Chambers: If your Honor please, I have never seen the contract; I cannot take as much on faith and credit as you do.

Mr. Ransom: They were here yesterday when you were not here.

Mr. Chambers: How do I know that clause is in the contracts? How can I say there is any such paper? I want them to show it to me. I have not as much confidence in the Gas Company as your Honor has.

Mr. Ransom: I object to the counsel taking advantage of his absence.

11070 The Master: The contracts are here, now you can look at them.

Mr. Chambers: All right, let me have them.

Mr. Ransom: They were all here yesterday.

The Master: They are here now. Let Mr. Chambers look at them.

Mr. Ransom: They were looked over by counsel yesterday, only you did not show up.

The Master: Until late in the session.

Mr. Chambers: If that is the reason why I am going to be deprived of cross-examination, why, I was not here.

Mr. Ransom: No one ever deprived you of

cross-examination. The contracts were here before the recess, ten or twelve days ago.

Mr. O'Brien: You mean within the room?

Mr. Ransom: Yes, on the desk here, and examined in part by counsel, and they could have been examined any time during the ten days, and should have been.

Q. Counsel has produced here a letter to you bearing date April 17, 1919, of the Lehigh & Wilkebarre Coal Company. Does that cover your agreement with that company?

A. I would like to see it, if you please (takes paper). 11072

Mr. Ransom: I think those things have all been gone over yesterday.

The Master: I am going to give Mr. Chambers a chance to cross-examine on that.

The Witness: It does.

By the Master:

Q. I see this letter of April 17, to which Mr. Chambers has called your attention, talks of the coal year. Is that a term used in the coal business "coal year"?

A. April to April is the coal year.

Q. Is that when the contracts are made?

A. It is the general practice throughout the whole coal industry. 11073

Q. So that, is my impression correct that, generally speaking, you cannot contract beyond the first of April?

A. As a rule not, because the adjustments with their miners are made from April to April, and the periods always end March 31st.

Q. So that the earliest period you could cover yourself would be March 31st, when these rates would go into effect?

A. I have no contract after March 31st of next year.

Q. You have contracts up to that time, though?

A. Yes.

Q. For coal?

A. For coal.

By Mr. Chambers:

Q. Your present contracts cover you to March 31, 1920?

A. Right, except one that was recently made, which runs to September 15, 1920, being made on September 15th of this year.

Q. Is that true of the bituminous coal contracts?

11075 A. Yes, and I refer to the bituminous coal contracts there.

Q. How about the wrought iron pipe?

A. We have got several months' supply in stock. Is that what you mean?

Q. That is very indefinite. How much?

A. If you will tell me how much we are going to use in the future, I can answer you, but I do not know.

Q. You ought to know.

A. I do not know what buildings are going up, or what building is going to take place.

Q. You have been with the company a good many years; you ought to know.

11076 The Master: I have seen a lot of seers go wrong.

Q. Mr. Gawtry, you ought to know how long your supply will cover on wrought iron pipe?

A. I cannot tell how many stoves the people are going to buy or rent. I cannot tell you how many buildings are going to be built in Manhattan or Long Island.

The Master: When we talk of laying in stock, Mr. Gawtry, or when you lay in a stock, you have got to pay for it?

The Witness: Yes, sir.

The Master: And the capital is dead?

The Witness: Exactly.

The Master: You are paying interest on it and losing the interest on it?

The Witness: Yes.

The Master: Is the question of judgment in buying and paying that interest on dead capital taken into consideration with the probable rise in price?

The Witness: Surely; that is one of the things you have to have in mind.

The Master: That is one of the things you 11078
have to take into consideration. What is the use of putting a million dollars worth of stuff into the yards, when they may lose just as much that way as in the rising price? That does not get you anywhere. We must be practical about these things.

Mr. Chambers: Instead of having so much stock of the Standard Gaslight Company, buy a few supplies.

The Master: I know, but they are getting income from the Standard Gaslight Company, I suppose.

Mr. Chambers: No, the Standard says they 11079
are not making a fair return.

Mr. O'Brien: They sue, too.

Mr. Chambers: In other words, that is a bad investment, according to the way the situation stands.

Q. What do you use wrought iron pipe for?

A. Setting stoves and meters.

Q. The setting of gas stoves and meters?

A. Right.

Q. Gas stoves that you rent out to your consumers or sell to your consumers?

A. Correct.

Q. And meters. Are those the only two things?

A. For certain repair work we may have our own, but that is very small.

Q. What do you use steel pipe for—the kind you have here?

A. We use that for certain things.

Q. That is most indefinite, Mr. Gawtry—certain things. You certainly do not use it to build aeroplanes with, do you?

A. I would like to go back to your first question.

11081 Perhaps you caught me dreaming there. What was your first question?

The Master: About wrought iron pipe.

The Witness: We use most of our wrought iron pipe—for what size did you ask here?

Q. The size you have, 3/4 to 1 1/2.

A. We use the largest size, 1 1/2, for services. Wrought iron pipe—we use the steel pipe for setting stoves and meters.

Q. There is no wrought iron pipe used for stoves?

A. I cannot say there is not any used. There may be some, but as a rule it is the steel pipe. There is not so much wrought iron pipe made, you know, be-

11082 cause the steel pipe is in the majority.

Q. Oxide; what do you use that for?

A. The purification of gas.

Q. The purification of water gas or coal gas?

A. The purification of water gas and coal gas.

Q. Most of that, I take it, is used over in the Astoria plant, or a good deal of it?

A. No; this is Consolidated that you are talking of here. It is used at 21st Street, most of it. That is the largest plant we have got.

Q. This includes what you buy for the Astoria Company?

A. That includes what we buy for the Consolidated on that sheet.

Q. And the red lead; what do you use that for?

A. Ordinary work around joints.

Q. In connection with what?

The Master: Perhaps Mr. Chambers does not know what a joint is, as you mean it.

Q. In connection with gas stoves?

A. Gas stoves, work generally, pipe work generally, mains.

Q. White lead the same?

A. Yes, and paints. 11084

Q. Linseed oil, boiled, what do you use that for?

A. Paints.

Q. Painting?

A. Painting.

Q. Painting buildings, do you mean?

A. Yes. We do not paint the buildings, we paint more of our construction work, our holders.

Q. You mean like painting your holders?

A. Holders and works around generally.

Q. Well, you have a gas holder paint. What is the difference?

A. That has linseed oil mixed in it.

Q. Cast iron pipe, what is that used for? 11085

A. Mains, in the streets.

Q. Stoves, too?

A. In the works. Cast iron pipe not used for stoves.

Q. Cast iron fittings?

A. Cast iron fittings, used for mains in the streets, and in our works, too.

Q. Iron castings?

A. Purification—iron castings. What does that say, iron castings?

Q. It says iron castings, that is all.

11086 Lewis B. Gawtry, Cross.

A. What size?

Q. None.

A. May I see that list?

Q. Yes. Not a word?

A. Iron castings used for repairs to our general works.

Q. What is that?

A. For repairs to our general works. We used them all through the works.

Q. Steel bars, 3 1/4 to 3 inches?

A. Use them for work all the time, in great quan-
11087 tities.

Q. Gas stoves?

A. Steel bars, no, we buy our stoves.

Q. Iron bars?

A. Same thing, general repair work.

Q. That would be repair of gas ranges, maybe, would it?

A. Not for ranges. It is for repairs in the works more particularly.

Q. Brass castings?

Mr. Ransom: I am inclined to object to this line of questioning. This witness was not called to prove the utility made, or the use made by the
11088 different departments of these particular supplies. He is able to indicate some of the uses, but I take it that he may not be able to give as full information as counsel would desire.

Mr. O'Brien: Your Honor, may I submit at this point that unless the witness has got a knowledge, good expert knowledge of the manufacturing end of it and the other branches of the business, he cannot be a proper purchasing agent for this company.

The Master: I will sustain the objection.

Mr. O'Brien: If that goes to the question of his ability to handle this branch of the company's business. He says he does not know anything about manufacturing gas.

The Master: I will sustain the objection.

Mr. Chambers: You mean you won't let me ask him anything more.

The Master: No.

Mr. Chambers: I will say for the purposes of the record that I am asking about these as preliminary to asking him some other questions.

The Master: Well, ask him the other ques- 11090
tions.

Q. How far do your contracts on wrought iron pipe cover?

A. We haven't any contracts for wrought iron pipe.

Q. How much of a quantity have you on hand?

A. That comes from an estimate. I could give you an estimate, if you wish.

Q. About how much?

A. Five or six months' supply.

Q. And are you carrying more wrought iron pipe,

A. 1918, about the same. We have used practically
a greater quantity than you did in 1918, or less? 11091
none since then.

Q. And you are carrying about the same as you did in 1917, 1916, 1914 and 1913, are you, that you are carrying now?

A. That is a different question.

Q. Well, what do you say about that? Or what are you carrying now in proportion, relative proportion to what you carried in 1913?

A. I could not tell without referring to our records of stock.

The Master: Mr. Chambers, I am going to limit that cross-examination. I am willing to let you bring out from the witness, as bearing upon his opinion as to future conditions, as to what he has in fact done with reference to it, taking a few of these items at random. You need not take every one, but taking coal and cast iron pipe and some other things, and take a few other items to bring out from the witness as to what he has in fact done, having in mind his statement that he thinks the prices are going up.

11093 Q. Steel pipe?

The Master: How much of a supply have you got?

The Witness: I think about six months, depending upon our uses. I cannot tell.

The Master: Well, you have said five or six months' supply. That is I get the impression that you carry a reserve for four or five or six months on all of these items?

The Witness: We do.

The Master: That will be your answer on every item then, if you are asked?

11094 The Witness: If these steel mills should shut down and we can't get any supplies for five or six months, we are taken care of.

The Master: Yes.

Q. Now, are you carrying more now of these twenty-six—well, we will eliminate the coal—these twenty-three items, than you were in 1916?

The Master: I will sustain the objection on that.

Mr. Chambers: I know, but counsel did not object to it.

The Master: I heard an objection.

Mr. Ransom: I have already objected to this line.

Q. Have you a greater supply now than you had of those articles or commodities, than you had in 1917?

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: How much does it cost to make gas? That is what I want to know, Mr. Chambers.

Mr. Chambers: Well, you must not complain to me about that, because I am willing to get 11096 right to that question.

The Master: I want to get down to how much it costs to make gas.

Mr. Chambers: You will have trouble about that with this company, I will just make the prediction. That is the question they don't want you to find out.

The Master: That is what you want me to find out, isn't it?

Mr. Chambers: Well, I don't think we will ever be able to find it if we stop without these other companies.

Q. Now, did you load up on any of these other 11097 commodities here in anticipation of high prices?

Mr. Ransom: I object to that question as indefinite.

The Master: I sustain the objection. The witness has already testified he carries a reserve of four or five or six months.

Mr. Chambers: Well, your Honor won't let me compare that with other years? This is very, very important.

The Master: I don't think it is, I don't think it is at all important. The witnesses has given

an opinion. As pure opinion evidence, his opinion is a little better than yours or mine might be, but it is pure opinion.

Mr. Chambers: I know, but I thought your Honor looked and acted as if you gave it considerable weight, and I wanted to change your opinion, if you had one.

The Master: Sometimes looks are misleading.

Q. Now, can you state with any reasonable certainty or definiteness about the quantity you are carrying now as compared with other years, say 1916 or
11099 1917?

The Master: I have already sustained objections on that line.

Mr. Chambers: Exception.

Q. Now, yesterday, when I was not here, I see from the record that you stated in 1918 the government made a reduction of ten cents a ton on coal over the price named in your contract. Were you correctly recorded on that subject yesterday?

The Master: What page is that?

Mr. Chambers: Page 157.

The Witness: A deduction of ten cents a ton
11100 made by the United States Fuel Administration, October 7, 1918.

Q. Have you given credit for that on these blueprints?

A. That shows.

Q. Show me where that shows on, say, Exhibit 286?

Mr. Ransom: That is anthracite.

Q. Oh, excuse me, on Exhibit 287.

The Master: Let me see Exhibit 287, will you? What is that, anthracite or bituminous?

The Witness: Bituminous. It does not show on this sheet.

Q. Does not show?

A. It does not show. It should show.

Mr. Chambers: Now, I move to strike out Exhibit 287 on the ground that it is incorrect and does not show the true situation.

The Witness: The year 1918. That should be corrected.

Mr. Chambers: Do you deny the motion?

The Master: Just one moment.

Mr. Ransom: I would like to be heard on that.

By Mr. Ransom: 11102

Q. As to what companies would that be applicable?

A. It would be applicable to all bituminous companies. The Berwind-White Coal Company and the Westmoreland Coal Company were the only companies from which we purchased that year, a matter of four or five thousand tons.

Q. It became effective as of what date?

A. The United States government put it into effect, ten cents—

Mr. Chambers: I think I ought to follow this up.

Mr. O'Brien: Let the cross-examination continue. 11103

Q. It became effective as of what date?

Mr. Chambers: Is this on the motion to strike out?

Mr. Ransom: Yes.

Q. It became effective as of what date?

A. October 7, 1918.

The Master: What was the price then?

The Witness: I will have to work it out.

Q. I ask you, did the Consolidated receive any bituminous coal in 1918, after the month of July?

A. The Consolidated only received coal during—

11104 Lewis B. Gawtry, Cross.

bituminous coal during the month of January and February, 1918. That accounts for it. It does not show it.

Q. There was no bituminous coal received by the Consolidated in 1918 to which that was applicable?

A. Except in January and February.

Q. Well, that would not be applicable?

A. It would not apply then at all.

The Master: Why do you have here, April, May, June and July, then?

Mr. Ransom: There is no October.

11105 The Master: Well, I know, but you see here you carry it right through with dittos.

The Witness: That is bituminous.

The Master: That is what I am talking about.

Q. Was any coal purchased by you or delivered to you as to which that government reduction was applicable in bituminous?

A. Oh, yes.

Q. To the Consolidated alone?

A. Not to the Consolidated alone.

Mr. O'Brien: Well, what does that mean?

The Master: One minute, will you?

11106 Mr. O'Brien: I am going to object, your Honor.

The Master: Well, wait a minute.

Mr. O'Brien: Counsel is leading the witness.

Mr. Ransom: No, I am not.

The Master: Let counsel alone. I think the more questions that are asked here the less possibility there is of this paper staying in. What is this paper intended to be, this Exhibit 287.

The Witness: It is intended to show those contracts for the year.

The Master: Intended to show contracts for the year?

The Witness: Show the changes in the contracts. Mr. O'Brien asked for that.

The Master: Well, didn't that ten per cent reduction affect these contracts?

The Witness: The ten per cent reduction is shown here. I am wrong. It does show. The price for the month of April was 3.024. Will you look at that please?

Mr. Chambers: Yes.

The Witness: The price for the month of June was 2.912 at the mine.

The Master: You said that only took effect in 11108
October?

The Witness: It took effect in certain fields. Now, it took effect in Westmoreland County at one time and in Pennsylvania and Fairmount County, West Virginia, in another. I can't tell you the dates exactly. The date I have here is October 10th, but that may be some other county. I had better look at that again.

The Master: On the Berwind-White coal it seems to have started at 4.43 at the mines.

The Witness: That was coal purchased during the war.

The Master: That is January, 1918? 11109

The Witness: Before the government made a price, and the government made a price far below that.

By the Master

Q. Then in April it came down to 3.02?

A. Yes.

Q. That was the same in May, then in July it dropped to 2.91?

A. That was the change in the price fixed by the government, the reduction.

Q. Is that the ten per cent you are talking about?

A. That is the ten per cent they are talking about, ten cents a net ton, 11.2, I think it is gross.

Q. Then these statements do show the reduction you have in mind?

A. Yes. I did not catch it at first.

Q. There was not another reduction in October again?

A. There must have been in another field, but not in that field, not in that Pennsylvania field.

Q. Then Exhibit 287 now shows, as I read it, that
11111 in May the price of Berwind-White was 3.024 at the mine, June was the same and in July it was 2.912 at the mine. Now, was there any other reduction? Is that the ten cents reduction that you referred to?

A. That is the ten cents, I think.

Q. Now, as to Westmoreland Company it reads that the price in April was 3.024. In May the same, and in June it was 2.912. That is the reduction you refer to?

A. Yes, 11.2 cents.

Q. So that there was a reduction in the Westmoreland field that took effect in June, apparently, and in the Berwind-White field it took effect in July, is that
11112 correct?

A. Apparently, yes, that is correct.

By Mr. Chambers:

Q. And did not take effect in October?

A. It may have been in another field that I have a memorandum of October.

The Master: So that this—

The Witness: You see we buy coals from a good many different fields.

The Master: So that this statement is correct, then?

The Witness: Yes.

Q. What does that statement represent, what you pay, or the prices of coal generally?

A. What we pay.

Q. Well, you did not buy any at that price?

A. We bought some in January and February.

Q. You did not buy any after this price of 2.91?

A. No, it was not necessary to put that in.

Q. Why, did you put it in if it was not the price you paid?

A. Because I understood Mr. O'Brien wanted the list of all our contracts, and that is one of our contracts. 11114

The Master: Would you have outstanding contracts that you did not take deliveries on?

The Witness: We took it to Astoria.

Q. You mean the Astoria Company got the benefit of this 2.91?

A. They did.

Q. And your company took the high priced coal?

A. No, the Astoria Company did not get the benefit of it until it went into effect. Whenever it went into effect.

Q. Of course not, but I mean the Consolidated used the 3.02 or the 4.43 coal?

A. For January and February. 11115

Q. Yes, I mean you bought your supply. You said you had enough to last you clear around?

A. Yes.

Q. To the next January?

A. Yes.

Q. 1919?

A. Yes.

Q. So you, the Consolidated, used the high priced coal, while the Astoria Company had the cheaper coal?

Mr. Ransom: I object to the question.

Q. Isn't that correct?

Mr. Ransom: As argumentative and contrary to the facts.

The Witness: We only took about 6,000 tons in those two stations during that year, January and February. We started up during those months, when we needed gas. During that period the price of coal was that, and afterwards the price was reduced ten cents a ton. That would apply to any companies that got that coal, not necessarily the Astoria.

11117 The Master: Well, you say that you did not get that coal?

The Witness: The plant was not running.

Mr. Ransom: 14th and 42nd were not running for February.

Mr. Chambers: I move to strike out that part or most of the answer, where they say they needed the gas, and all that, as not responsive. That is another question.

The Master: That motion is denied, likewise the motion to strike out the exhibit is denied.

Q. Did the Consolidated Company get any of the 2.91 coal for its use, or was that all delivered to the

11118 other companies?

A. Is that a copy of that sheet?

Q. Yes.

A. The Consolidated got—evidently had to pay during the months of January and February, it was 2.02 when we got Westmoreland, and 4.43 always at the Berwind.

Mr. Chambers: I take an exception to that ruling.

The Master: Get this clear on the record. It would appear from this that you were buying

bituminous coal very much cheaper from Westmoreland than you were from Berwind-White?

The Witness: That Westmoreland contract was made three years previously, in 1915.

The Master: And in the month of April I see the price was precisely the same as to both companies. That was due to government regulation.

The Witness: It was.

Mr. Chambers: Now, take Exhibits 283, 288 and 289 for identification, you say nothing about quantities here at all? 11120

The Master: That is fully covered. We have been over it a dozen times. It does not give any quantities. Mr. O'Brien has stressed that point.

Q. What did you intend to show by this exhibit 283, by highest and lowest?

Mr. Ransom: I object to that.

The Master: Objection sustained as fully covered.

Q. Has the government revised the price of coal or removed it entirely?

A. The government has removed its price on coal.

Q. It is now according to supply and demand, is it? 11121

A. Yes.

Q. You are free to contract at whatever price you want?

A. We are, at very much higher prices on bituminous.

Q. I beg your pardon?

A. At very much higher prices than under government control.

Q. How is it on anthracite?

A. The same.

Q. When did you make a contract on these two

kinds of coal, before the government removed the price or after?

A. After the government had removed the price, but at the old government price. Now, the prices are higher on bituminous, a good deal.

Q. But you have a price on coal—

The Master: He has it up to September 15th on one contract.

Q. September 15, 1920?

A. Yes.

Q. So you are not concerned with the price of coal
11123 then at all?

A. We are very much concerned on that last contract. Instead of paying $2.60 at the mines we are paying $3.25 at the mines—$3 at the mines.

By Mr. Ransom:

Q. What does that make delivered?

A. $6.50.

By Mr. Chambers:

Q. I know, but the Consolidated Gas Company is not making any coal gas?

A. Not just at the present time.

Q. So, why are you concerned so much about coal if you are not making any coal gas?

11124 A. We may make it at any time.

Q. What?

A. We probably will have to make it during the winter, if the demand is such as to require it.

Q. You didn't make any last winter?

A. We did.

Q. You made coal gas last winter?

A. 1919 you are speaking of?

The Master: 1918-19.

Q. With the exception of three days—I guess maybe you did run three days.

A. Only a few days. I am much obliged to you.

Mr. Chambers: That is all for the present.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Gawtry, has Williams & Peters any coal yard in the City of New York?

A. I don't think so; I never heard of it.

Q. So Williams & Peters have no coal yards in the City of New York?

A. Not that I know of.

Q. You would know it if they had?

A. In all probability, yes.

Q. You know that firm pretty well?

A. They don't have a retail business. They are 11126
wholesale, they are sales agents for the Erie Railroad.

Q. Just sales agents?

A. That is all.

Q. And get two cents a ton for just doing the business?

A. I don't know what they get.

Q. Don't you go into that question?

A. I haven't the slightest idea what they get.

Q. Don't you dig deep enough to find that out?

A. No, I don't think they would tell me if I did.

The Master: They would probably tell you to mind your own business.

The Witness: I cannot go into the prices they 11127
have to pay the miners, and what their salaries are—

Q. Who pays miners?

A. Williams & Peters.

Q. Do you think they hire miners?

A. They are the selling agents of the concern that does, yes.

Q. Has the Lehigh & Wilkesbarre Coal Company any yards in the City of New York?

A. They are wholesale people only.

11128 Lewis B. Gawtry, Cross.

Q. Or adjacent to the city, like Jersey City or Bayonne or Staten Island?

A. They have one away out two or three hours from New York, out in New Jersey or Pennsylvania somewhere.

Q. Has Meeker & Company any yard in the City of New York?

A. I don't think so.

Q. Have Thorne, Neale & Company any yard or dock where they receive coal?

11129 Mr. Ransom: I object to that as quite immaterial.

The Master: I take it that Mr. O'Brien has some point in his mind.

Mr. Ransom: It is not a case of delivery from yards.

The Master: I want to see what his point is.

Q. Has the Philadelphia & Reading Coal & Iron Company any dock or yard within the City of New York?

A. No.

Q. Or on tidewater about New York?

A. No, they are wholesale people only.

11130 Q. Has the Lehigh Valley Sales Company any yard in New York, New Jersey, Bayonne, or any place around New York Harbor?

A. I don't think so.

Q. When Williams & Peters deliver coal to you you get a bill from them for the coal, don't you?

A. Yes.

Q. And that gives you a price that you are to pay them?

A. Right.

Q. What does the written contract for 1919 with Williams & Peters provide as to prices? You have it handy perhaps.

The Master: You have it on your desk there, Mr. O'Brien.

(Witness examines contract.)

A. What part of it? 60,000 tons of grate anthracite coal?

Q. What is the expression he uses, grate?

A. Grate.

Q. Grate or anthracite?

A. Grate anthracite. Some people use the word "broken," some use the word "grate."

The Master: We had all that yesterday. Now, what is the price? 11132

The Witness: $8.15 within harbor limits; $8.20, 99th Street; $8.25 at Astoria; $8.25 at Central Union Gas Works; war tax on transportation charges and insurance premiums will be added.

Q. They don't say anything about freights there, do they?

A. No, except on transportation charges; that is freight.

Q. It doesn't say that to the $8.25 you add freight?

A. No.

Q. The $8.25 includes freight?

A. It does. That is within harbor limits, coal delivered alongside dock within harbor limits. 11133

Q. Williams & Peters take care of the delivery?

A. They do. We buy our coal alongside.

Q. Now, you have on this exhibit here, under Williams & Peters, railroad freight, January, 1918, $1.45. Where did you get that figure?

A. From the schedules of the railroads, printed schedules.

Q. Would you change that figure if I showed you the testimony of Mr. Harry Peters to the effect that 60 cents was the freight rate in 1918?

11134 Lewis B. Gawtry, Cross.

A. 1918?

Q. Yes, sir.

A. Would I what?

Mr. Ransom: I object to the question.

Q. Have you produced in court today any sample bills of Williams & Peters covering coal that was delivered to the complainant company last year?

A. I have not.

Q. Have you produced a sample or any number of the bills that were presented by any of the other companies, that we might look into on cross-examina-

11135 tion?

A. They are all on file in the company's files.

Q. Have you produced them here?

A. Not here.

Q. You say that you went to the schedules of railroads, and not the bills of the coal companies to find out what the freight rate was?

A. I know what the freight rate is.

Q. You said a minute ago you got that from the railroad schedules?

A. Right; also from the coal companies.

Mr. O'Brien: I show counsel the testimony of Mr. Harry Peters of the Fuel Administration,

11136 given in the case of the Kings County Lighting Company, and ask if he will assent to the proposition that that is his testimony under oath, and not require me to bring Mr. Peters here?

Mr. Ransom: That has nothing to do with the case whatever.

Mr. O'Brien: I mean as to the authenticity of the testimony.

Mr. Ransom: Here is a Kings County case—

The Master: It is easy for you, Judge Ransom, to say no.

Mr. Ransom: I don't know what it is about.

Mr. O'Brien: Your Honor, it is the statement of Mr. Peters under oath on all these questions—

The Master: I don't care what Mr. Peters testified to somewhere else.

Mr. Ransom: I will say no to your question.

Mr. O'Brien: I have simply asked him, as a matter of convenience, whether I would have to bring the stenographer here. I can bring Mr. Peters here and put him under oath.

The Master: That is the only thing to do.

Mr. O'Brien: He is a busy man and the testimony runs along the lines and refers to his dealings with the Consolidated Gas Company and the prices they were paid, and the various details given. 11138

The Master: You have to bring him here, you can't escape it.

Mr. O'Brien: I will ask counsel if he will produce any of the coal company representatives who entered into these negotiations on the question of the contract relations with the complainant company. This is a matter of time saving.

Mr. Ransom: I shall prove my case.

The Master: I thought that is all you would get.

11139

Mr. Ransom: And I shall expect you to comply with some of the rules of proof to which you have held me.

Q. Referring to Williams & Peters sales to the company during the year 1918, you have on this Exhibit 286, January, you have a price alongside of $6.61.

The Master: What year?

Mr. O'Brien: January, 1918.

Q. Don't refer to your book, I want something from your memory, if you are able to state anything about it without digging into that book of yours.

11140 Lewis B. Gawtry, Cross.

The Master: What is your question?

Q. What was your agreement with Williams & Peters in January, 1918, as to the delivery of coal, as to the price paid and the manner in which it was to be delivered?

A. I don't remember offhand.

Q. What was the price in February, 1918?

A. The same answer.

Q. Wasn't this an arrangement made with some member of that firm over the telephone orally?

A. We were to get as much coal as we could from
11141 them, we would buy it anywhere at the government price.

Q. Just tell me what your conversation was with the representative of Williams & Peters? What you said and what he said when you entered into your arrangement?

A. I don't remember.

Q. Were you not accustomed to make pencil memoranda when you had a conversation, in order to verify the arrangement you made?

A. Not necessarily, when the price was fixed by the government.

Q. The government did not fix the prices of lighter-
11142 age in New York Harbor, did it?

A. No, it was fixed by the Shipping Board.

Q. Was the arrangement alongside?

A. All of our anthracite coal is bought alongside.

Q. It is bought alongside?

A. Yes.

Q. You didn't pay any lighterage, Williams & Peters did all the lighterage for you?

A. Yes.

Q. And they gave you the flat price over the telephone or in conversation?

A. I may have seen him a dozen times. I don't re-

member which one time it was when we made the contract.

Q. He named the price alongside?

A. Yes.

Q. And that meant alongside your dock?

A. Right.

Q. He hasn't any dock in New York?

A. No.

Q. So that the figures embraced the lighterage, didn't it?

A. It did.

Q. And the freight? 11144

A. Yes.

Q. And you think you got as good a price from that firm as any other company in New York?

A. I do; I am sure of it.

Q. Will you deny that the price, January to April, inclusive, 1917, was $5, long ton, grate coal, f. o. b. New York tidewater, New York upper port?

Mr. Ransom: I object to that. The question has nothing to do with 1918.

The Master: Are you talking of 1917 or 1918?

Mr. O'Brien: I am beginning with 1917, and I will come right down to the present time.

Mr. Ransom: He hasn't given anything on any exhibit, or on the exhibit to which attention has been called, about 1917 figures. 11145

The Master: He gave the high and low prices for 1917.

Mr. Ransom: But he did not give the elements entering into it.

The Master: I will allow the witness to state whether he will deny that the price alongside, January to April, 1917, was—how much?

Mr. O'Brien: $5 long ton, grate coal, f. o. b. New York tidewater, New York upper port.

The Master: $5 flat?

Mr. O'Brien: Yes.

The Witness: What month?

The Master: January to April, 1917. Mr. O'Brien says the price was $5 flat alongside.

Mr. Ransom: He has not said that.

The Master: Mr. O'Brien wants to know whether that was not the price.

Mr. Ransom: He asks the witness to deny it.

A. I have not those figures here, I cannot tell you offhand. I can't go back two or three years and pick these things up in my mind.

11147 Q. How much time do you give to this purchasing business, Mr. Gawtry?

The Master: Objection sustained.

Mr. Ransom: We have been all over this.

Mr. O'Brien: I am going to find out whether he earns his $50,000 or not.

The Master: And I am going to insist on my ruling. Objection sustained.

Mr. O'Brien: Exception.

Q. You devote a good portion of your time to other companies and other business?

The Master: Objection sustained.

Q. You are going away now for two weeks on

11148 other business, are you not?

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: The witness testified that he was going on his vacation. He either testified or made that statement.

Q. What hours during the day do you put in on the business of the company at their office or at their concern?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. How many men have you under you in the purchasing department?

Mr. Ransom: All of that has been covered twice.

The Master: Objection sustained.

Q. Do you do any other business besides what you term the supervision of the purchasing department for the complainant company?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Q. Will you deny that $5.55 in May, 1917; $5.60 in June, 1917; $5.70 in July, 1917; $5.80 in August; from September to November, $6.35—were the prices that Williams & Peters charged for coal, long ton, 11150
grade coal, f. o. b. New York tidewater, New York upper port?

Mr. Ransom: I object to the question.

The Master: During 1917?

Mr. O'Brien: Yes.

The Master: If the witness is able to say one way or the other, I will let him say.

The Witness: I could not say.

Q. Will you deny that in 1918, from January to March, inclusive, it was $6.35? April and May, $6.50; June 25th, increased to $6.80—anthracite coal, under the terms I have just mentioned.

A. I could not say. 11151

Q. And July to October, $6.80?

A. I could not say.

Q. November and December, $7.85?

A. I could not say.

Q. And the price as of the date of Mr. Williams' testimony in the Kings County case, April 8, 1919, $7.85, as fixed by the Fuel Administration.

Mr. Ransom: I object to the question. This is meant solely as an indirect effort to get into evidence something based on conditions that are not identical.

11152 Lewis B. Gawtry, Cross.

The Master: You have here your notes of 1918, have you not? If your figures as given here are in conflict with the figures Mr. O'Brien has read, you deny those figures, do you not?

A. I remember that price of $7.85. That is with the price of $1.05 additional made by the government.

The Master: Read me those prices, Mr. O'Brien.

Mr. O'Brien: January to March inclusive, $6.35; April and May $6.50—

The Master: Wait a minute now; does that in-
11153 clude insurance?

Mr. O'Brien: These prices that I am giving you now are the prices testified as being fixed by the Fuel Administration.

The Master: Yes, but does that include insurance?

Mr. O'Brien: It does not.

The Master: Does it include war tax?

Mr. O'Brien: It does not.

Mr. Ransom: They are tidewater prices alongside.

The Master: The testimony of Mr. Gawtry is the price alongside included insurance and war
11154 tax, and was $6.61 and a fraction. You say that Mr. Peters testified it was $6.35. When you add to $6.35 twenty cents for war tax, you have $6.55 right away.

Mr. O'Brien: The 20 cents is for the water freight.

The Master: Oh, the war tax is four cents, insurance one cent—well, however that may be, Mr. O'Brien wants to know, if Mr. Peters says that his price was $6.35 in January, whether you deny it.

Mr. Ransom: I object to that. Mr. O'Brien brings in a record in another case—

The Master: I will sustain the objection. You say that Williams & Peters charged you in January, including all these items, $6.61 and a fraction?

The Witness: Right.

The Master: That is your statement?

The Witness: Yes.

The Master: Without regard to what Mr. Peters has said somewhere else, or something else.

The Witness: He was referring to Brooklyn deliveries. The freight is different.

Q. Is that so? Do you know that, Mr. Gawtry? 11156

The Master: You need not answer that. Objection sustained.

Mr. O'Brien: Exception.

By the Master:

Q. Your testimony is that in February and March it remained the same, $6.61 and a fraction?

A. Right.

Q. And in April $6.97 and a fraction?

A. Right.

Q. In May it was $6.92 and a fraction?

A. Right.

Q. And in June it was $7.33 and a fraction?

A. Right. 11157

Q. And July $7.33 and a fraction?

A. Right.

Q. August the same?

A. Right.

Q. And September the same?

A. Right.

Q. And October the same?

A. Right.

Q. And in November $8.38 and a fraction.

A. Right.

Q. That is your testimony?

11158 Lewis B. Gawtry, Cross.

A. Yes.

Q. That is what they charged you?

A. Yes.

Q. And that is what you paid?

A. Yes.

Q. If Mr. Peters has at any time testified that his price delivered in the same locality as yours, was any less than that you deny it?

A. I do, and I would like to see him on the stand here.

Mr. O'Brien: In order to make the record
11159 complete. I ask the witness on what he bases the statement that the delivery would be any different to the Kings County Lighting Company than to the complainant company.

The Master: I will let him state that. I thought he already said the freight rate was different to Brooklyn.

The Witness: The water freight.

The Master: The water freight is different to Brooklyn?

The Witness: So I have been told. I know what our freight rate is; I don't know what theirs is, but I have been told it is different.

11160 By Mr. O'Brien:

Q. When you stated earlier in the day that you made up this record from private papers, what did you mean?

Mr. Ransom: He didn't say private papers. I object to that.

Mr. O'Brien: Yes, he did.

The Master: What paper are you talking about?

Mr. O'Brien: I want to show by the cross-examination of the witness that this Exhibit 286, and Exhibit 287 covering bituminous coal, should

not have been received in evidence, for the reason that it is not shown what it is based upon—

The Master: Ask your question.

Mr. O'Brien: I wanted to complete my sentence.

The Master: Now, I know what paper you are referring to. You say it is based on some private memoranda that you had. Mr. O'Brien wants to know what that private memoranda was.

The Witness: I don't think I used the words "private papers." I haven't any private papers. Memoranda that I may have taken at the time. 11162

By Mr. O'Brien:

Q. If I am in error, you made reference to records, didn't you?

A. I think so.

Q. Is it your custom to make memoranda whenever you talk over the telephone or have a conversation as to prices?

The Master: Objection sustained; that has already been answered.

Mr. Ransom: It is fully covered.

Mr. O'Brien: Exception.

Q. What records did you refer to when you said you made this up from records? 11163

A. Probably pencil memoranda, probably a letter, probably a memoranda of a telephone conversation I might have on file.

Q. You say might have; don't you know? You were over it in the last few days?

A. I am not sure that I have it now.

Q. Were those Exhibits 286 and 287 made up in the last few days?

A. Yes.

Q. Can't you tell us what those records are?

A. I have them in my files. I referred back to

vouchers. You see, Mr. O'Brien, in picking out these prices—we buy the coal alongside. You have asked me for mine prices and freight rates—

Mr. O'Brien: I didn't ask you to bring anything here.

The Master: Yes, you did. You asked him for certain information, and he has prepared it. His testimony was that the delivered price—to illustrate, Williams & Peters in January was $6.61175. You asked, "How is that made up?" He says it is made up of freight, insurance, war tax. "Well,
11165 how much was the freight?" He said, "It was $1.45." Then you asked, "Have you got a statement showing just what it was at the mines?"

Mr. Ransom: And the variances.

The Master: And you asked him if he could prepare it. He said yes, and he has prepared a statement where he has put down the alongside price as $6.61; he has analyzed how that is arrived at, that the basic price is $4.90 at the mine, that he adds to that the insurance, railroad freight, water freight and war tax, which makes up the total. That gives you the information you want. That is all there is about it. I do not
11166 see anything to be gained by continued cross-examination of the witness on that line. If Mr. Peters says that is not the price, we will find it out quick enough. I cannot conceive of a situation where this witness should testify to the Williams & Peters price in January, 1918, and then have Mr. Peters say it is not so. I cannot conceive of it.

Mr. O'Brien: Your Honor, you are going to find that some companies have bought oil for three cents, while this company was paying a good deal more. Could you conceive of that?

The Master: I am talking about coal. I can conceive of that. I could conceive of Williams & Peters selling me cheap coal.

Mr. O'Brien: And we are going to show you that they paid less than is put down here as the last price in 1919. Could you conceive of that?

The Master: Yes.

Mr. O'Brien: I am not proceeding on the presumption that this man is giving us the whole story.

The Master: I am proceeding on the presumption that when Mr. Gawtry testifies he paid Williams & Peters in January $6.61, he did it. 11168 If Mr. Peters sold it cheaper to some one else, let us find out; but I do not see that we are going to get anywhere by assuming Mr. Gawtry is not telling the truth when he says he paid Williams & Peters so much. If Mr. Peters comes here let him deny it, and then we will find out about it.

I think there is a good deal of false swearing in some trials, and in some classes of cases, but I do not anticipate it here. I can understand how the Consolidated Gas Company might want to boost up these figures, as accountants frequently do, to satisfy their convenience, but they are not going 11169 to produce a witness to swear that he paid a certain price, when it is so easy to show that he did not.

The Witness: The prices are public.

The Master: The situation is that day in and day out in the trial of cases in the courts—I have seen it, the Judges and all other lawyers have seen it—witnesses will swear to things that never have happened at all, and in the trial of lawsuits you have got to suspect that witnesses are not telling the truth. But cases are different and facts are different.

11170 Lewis B. Gawtry, Cross.

By Mr. O'Brien:

Q. What is the water freight today, Mr. Gawtry?

The Master: I shall sustain an objection to that on the ground it has been fully covered.

Mr. O'Brien: Your Honor, of course, the witness can come in here and be handed a detailed statement, and then we are going to be shut off from cross-examining him in order to find out how much he knows about it—

The Master: You have been all through that.

Mr. O'Brien: He has handed us these blue-

11171 prints here, giving us a lot of details.

The Master: But you have forgotten that you have gone all over this same subject.

Mr. O'Brien: We have here the Purchasing Agent, and suppose we are going to consider at 14th Street and Irving Place today how much coal they are going to purchase. Is the witness here going to be equipped to get Mr. Peters and these other firms on the 'phone and discuss with them the prices of coal, unless he has ready knowledge of the prices that obtain? Am I asking him too much to ask him the prices of lighterage and those things?

11172 The Master: But you have asked it of him before.

Mr. O'Brien: I have not. I have asked him just general questions.

The Master: If you do not think so, I will let him answer it again. What is the water freight today, Mr. Gawtry?

The Witness: 45 cents.

Q. And the railroad freight today is what on anthracite coal?

A. $1.85.

Q. Are you having any difficulty today in getting coal?

Mr. Ransom: That has all been gone over before.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: I have been at this case since the 15th of July, trying to make some headway on the proposition as to what it costs to make gas, not as to whether dealers do or do not decline to fill orders for coal.

Mr. O'Brien: I will not stop to comment, but as soon as we get into some subjects, your Honor, we are told this witness is not the witness to testify to those things, he is only put on to testify to one end of it; if I asked him whether these vouchers or bills finally presented show certain things, he says no, that is an accountancy matter, he only made the price. We ask him whether the quality was good, and he says that is the manufacturing end of it, if it was not good, he would hear from it. 11174

The Master: I have ruled upon that question. Ask the next one.

Q. You have given us opinion testimony as to the future, Mr. Gawtry. Have you made a study of that matter? 11175

A. I have.

Q. To what extent did you go into that subject?

A. The future of general prices you refer to?

Q. Yes.

The Master: I think that has been fully covered, and I shall sustain an objection to it.

Mr. Ransom: I object to it. It has all been gone over twice.

The Master: There is nothing to be gained by asking the same line of questions that your associate, Mr. Chambers, representing the State, has asked.

11176 Lewis B. Gawtry, Cross.

Mr. O'Brien: If that rule is going to be followed, he having the first examination of the witness, it would curtail the matter given to me for the examination of the witness.

The Master: Not when you have new points.

Mr. O'Brien: I have new points. I have matters that were not covered by Mr. Chambers.

The Master: Let us have the new points, then. I rule this out.

Mr. O'Brien: I have tried to keep away from the subjects that Mr. Chambers has covered.

11177 Q. Have you gone into the strike situation at Pittsburgh in connection with the price of steel?

A. I have.

Q. Do you think wages are going up?

A. In the steel industry?

Q. Yes, sir.

A. No, I do not think they are.

Q. Do you not think that Judge Gary has won out?

Mr. Ransom: I object.

The Master: Objection sustained.

Mr. Ransom: We are not going to try the steel strike here.

Q. I will put it the other way, do you think wages
11178 are going to go down there?

A. No.

Q. Then you are of the opinion that they are going to remain at the present level?

A. I am.

Q. For how long?

A. Sometime in the future.

Q. How far into the future would your judgment permit you to wander?

A. It depends upon the cost of living. The wages will go down when the cost of living goes down, and not before, in my humble opinion.

Q. You have got a price here for gas oil in the last column of this exhibit—

The Master: I refuse to let the witness give any testimony as to gas oil.

Mr. O'Brien: Let me finish the question, your Honor.

Q. (Continued.) In the last column, entitled, "Price last actually paid, 1919, .061082." Do you know when that price was paid?

Mr. Ransom: Are you referring to Exhibit No. 289 for identification?

The Master: I think it is. 11180

A. What time of the year?

Q. Yes.

A. No, I cannot say. It was the last price we paid, so it is very recent. A month.

Q. Was it under a contract made within the last few months?

A. I don't know when the oil contract was made. I am not posted on oil.

Q. You have a general knowledge of the prices that are being paid out by the company, have you not?

A. Yes, but I have not made the oil contracts. Mr. Addicks had full charge of that. I had nothing to do with those things. 11181

Q. When you gave your opinion as to the future, did you not include oil, gas oil?

A. No.

Mr. Ransom: He excluded oil very specifically.

Q. Do you ever advise Mr. Addicks as to matters pertaining to oil contracts?

A. No, sir.

Q. Do you give him any suggestions from information which you glean while you are purchasing other materials?

A. Not on oil.

11182 Lewis B. Gawtry, Cross.

Q. You stated yesterday, Mr. Gawtry, that you were a director of the Williamsport Company. Were you not president of it at one time?

A. I was not.

Q. You were never president?

A. No.

Q. You spoke of not having room for large purchases of coal; that is, which would cover a long term, as suggested by Mr. Chambers. You said you did not have room for it. Did you mean the complainant company?

11183 The Master: He did not limit his statement to coal. The question was directed to all the 24 or 25 items. They might be able to store a lot of coal and yet not be able to store a lot of other items.

Q. When you said "we," did you mean the complainant company, or did you embrace in that the affiliated companies.

A. I am speaking of the Consolidated Gas Company.

Q. Is there any material delivered at Astoria and used afterwards by the Consolidated Company?

A. No. There may me some small stock of steel
11184 or iron, iron bars, or something like that, taken from one station to another in a hurry, but it is very expensive to move and we only do it in case of emergency.

Q. Then you do not store any coal over there for the use of the Consolidated Gas Company?

A. No.

Q. And you have not in the past done that?

A. We have our storage yards on Manhattan Island our respective plants.

Q. Have you ever done it over there; have you ever stored any material?

The Master: You are talking about coal now?

Mr. O'Brien: Including coal—at Astoria, for the complainant company.

The Master: Limit your questions to coal first, and then we will take up the others.

Q. Have you ever stored coal?

A. No, the coal delivered is for the Astoria Company, and the coal delivered here is for the Consolidated Company, a very marked difference.

Q. Well, the answer is no?

A. The answer is no.

Q. Is there any particular reason for your distributing your business between these different companies? 11186

Mr .Ransom: I object to the question as not material, and certainly not within the scope of this witness's cross-examination.

The Master: I will let him answer that one question.

A. You referred to coal?

Q. Coal, yes?

A. That would be the last thing I would do, give all of our business to one company. It means it would come from one set of mines, delivered over one railroad, it would be in their hands entirely, in case of strikes, shut downs. We distribute our business the best we can. 11187

The Master: Or accidents.

The Witness: Or accidents. It would eliminate competition if we did that. We try to get as much competition as possible. In the anthracite, there is no competition; in the bituminous there is a good deal.

Q. Have you been able to provoke any competition during 1919 on coal?

A. On bituminous, yes; anthracite, no.

Q. Have you been able by negotiation to get a good price on bituminous?

A. Not the price I would like to get. I would like to get it much cheaper if we could. That is my job.

Q. Well, your job does not depend upon the results that you show up?

Mr. Ransom: I object to it.

The Master: Objection sustained.

Q. Does it?

The Master: I sustain the objection.

Mr. O'Brien: Exception.

11189 Q. Did I understand you to say you were going to open the 14th Street and 42nd Street plants this winter?

A. I did not say that.

Q. Didn't you make some reference to it?

The Master: He did, he said it might be necessary.

The Witness: It might be necessary. I did not say we were going to do it. I don't know.

Q. Well, now, in connection with your opinion as to the future, did you make a detailed study of the strike situation at Pittsburgh on the question of the price of steel?

11190 The Master: He has already answered that. Objection sustained.

Mr. O'Brien: Exception. I would like to have the record state, your Honor, that I would like to and intended to proceed, if I have permission, to ask the witness a great many questions as to the basis of his opinion.

The Master: Well, ask your questions and I will rule on them.

Q. Could you state, in round figures, what part materials other than oil, gas oil, play in the expenses of the company, the operating expenses?

Mr. Ransom: I think the books are the best evidence of that.

The Master: I am going to let the witness say, if he knows.

The Witness: These twenty-six items we have given on this sheet show the principal items we purchase.

Q. Well, I mean what percentage of your cast of manufacture of gas is materials other than gas oil?

A. I could not say that; I do not know.

Q. You could not say that offhand?

The Master: He has answered that. He said 11192
he could not.

Q. After you make your contracts with the coal companies, your business is done as to coal?

Mr. Ransom: Objection to that.

The Master: Objection sustained, fully covered.

Q. You spoke about the use of wrought iron pipe. You were asked in connection with this exhibit here showing the prices, what that was used for. Was your answer that it was used in the services?

A. It was.

Q. The company has been using wrought iron pipe right along for services? 11193

A. It has.

Q. They do not use steel?

A. No. Wrought iron.

Q. Do they use any steel pipe?

A. I do not think so. They use steel pipe, but not for services. Yes.

Q. Well, now, why don't they use steel pipe for services?

Mr. Ransom: I object to the question.

The Master: Let him answer that. I think the answer is apparent, it costs too much.

The Witness: The wrought iron has been considered better for underground work.

The Master: Doesn't steel cost more than wrought iron?

The Witness: Yes.

The Master: Steel pipe would cost more anyhow?

The Witness: No, steel pipe is better than wrought iron.

Q. Now, why don't you buy all steel pipe for your services, instead of wrought iron pipe?

11195 The Master: He answered that; he said because wrought iron is considered better for underground work.

Q. Is that your judgment, or is that a judgment handed to you by somebody else?

A. That is the judgment of our engineers, who made a very thorough study of that subject for a great many years, experience with both pipes underground.

Q. Have you ever figured out how much could be saved the complainant company in the services if they were made of steel instead of wrought iron?

A. That has been determined, I presume.

11196 The Master: You have not done it.

Q. I know, but it is a subject you would naturally address yourself to in the business you do of purchasing and keeping down expenses in the purchasing line?

A. We purchase the best material for that purpose.

The Master: Which the engineers call for.

The Witness: Which the engineers call for. Wrought iron is considered best for services.

Q. You say that since they consider it the best, we must have wrought iron even though steel is cheaper, that is correct, isn't it?

A. Yes.

Q. In other words you bow to their judgment as to the kind of material to be used?

A. I do.

Q. And so in the commercial side of it you do the same thing, do you?

The Master: What do you mean by the commercial side of it?

Q. Well, take the appliances?

A. Yes. We have a department that studies that, trained experts.

Q. Well, now, who is it that gives you the judg- 11198
ment that you use in the matter of making purchases of appliances, as to the best kind of appliances to use?

The Master: He answered that yesterday. The utilization department.

Q. Who is it in the utilization department that gives you that judgment?

A. The superintendent of it, Mr. Rash.

Q. Mr. Rash?

A. Yes. Mr. Fogg was formerly in charge.

Q. How long has Mr. Rash been handling that subject?

Mr. Ransom: We object to that.

The Master: Objection sustained. 11199

Q. When did he succeed Mr. Fogg?

The Master: Objection sustained.

Q. Well, when did Mr. Fogg leave the company?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. O'Brien: Exception. The point is, your Honor, I want to bring out that there are men who know these things, have the particular information, with the company, which they are not producing, like Mr. Macklin. If we had him here, we could cross-examine him as to these

things. This witness conceals himself behind the proposition, "Well, I don't know that without my data."

The Master: You have made the point and brought out that Mr. Rash is the man who knows about it, and previously Mr. Fogg. That is all we need about it.

Q. Does the utilization department through Mr. Rash control the types of appliances bought?

A. They pass upon all appliances that we buy, the types and demand for certain quantities of those, is
11201 based on the public demand. The public may require a certain type of stove; it may require a high oven or a low oven.

Q. You are in that high low business again.

The Master: You need not answer that.

Q. Who determines whether you want to give the business to the Crane Company, or to some other company, in the appliance business?

The Master: I am going to let the witness answer this, although I know it was answered before.

Mr. Ransom: Fully covered.

The Master: Answer it.

11202 The Witness: It depends on the bids. The supplies having been already passed on by the utilization department, bids are secured, the man who has charge of the industrial appliances of the district and the sales, recommends—makes certain recommendations that would go to the executive committee, and they would have final decision on it, when purchased in quantities, as they usually are.

Q. Do you mean by that, Mr. Rockefeller and Mr. Brady and such gentlemen would determine the question of whether you are going to buy Vulcan or Peerless or something else?

Mr. Ransom: I object to the question. He has testified to Peerless.

The Master: I will allow it.

The Witness: They would probably take the recommendations of the people who had actual charge of that, but they would pass on it eventually, though.

The Master: In other words, strange to say, these men do take an interest in the affairs of the company and do use their judgment about these things?

The Witness: Take a great deal of interest. 11204
They are experts. They have been in this business for years.

Q. Who has?

A. Mr. Rockefeller and Mr. Brady that you mentioned.

Q. They have been in the appliance business for years?

A. Gas business.

Q. There haven't been many gas meters bought, I understood your testimony yesterday to be, there weren't many gas meters bought in the last two or three years?

A. Very few; there has been no building. 11205

Q. Malleable iron fittings, are they confined to work on the consumer's premises, largely?

A. Practically altogether.

Q. And I assume that there has been very little purchase of that in the last year?

A. We have recently taken on about a six months' supply in the future. We had reason to believe the price was to advance.

Q. Where do you keep that material?

A. Scattered around in the different fittings shops.

Q. You haven't many fittings shops?

A. Five.

Q. Hester Street?

A. Hester Street, 21st Street, 111th Street, 66th Street, and 159th Street.

Q. You say you have a fittings shop at 111th Street? A. Yes.

Q. At what place? A. The southeast corner of 111th Street and First Avenue, second floor.

Q. Well, there has been very little new construction work that you recall, that would require this red building brick, in the last year and a half?

11207 Mr. Ransom: Objection.

The Master: Objection sustained.

Q. Have there been any very large purchases of Portland cement, in the last year and a half?

Mr. Ransom: Objection.

The Master: Objection sustained.

Q. Could you describe the 1918 contract on cast iron pipe?

A. Could I describe it?

Q. Have you got it with you?

A. No, I haven't got it with me.

The Master: Who was it with?

Q. Did anybody suggest that you bring it in here?

11208 A. No, sir. United States Cast Iron Pipe & Foundry Company?

Q. Did counsel suggest that? Did it occur to you that you would be asked a question about that matter?

A. It did not, any more than you are asking me now.

Q. Well, do you know what the terms of the contract were?

A. So many tons of cast iron pipe, different sizes, delivered alongside of our docks at New York. Delivered in New York.

Q. Well, does it extend over a certain term of years, or over a certain quantity of material?

A. Certain quantity of material.

Q. How much?

A. I have forgotten; I don't know.

Q. You have forgotten that?

A. I have.

Q. That is a trivial matter that you would not retain?

The Master: The objection is sustained.

Mr. O'Brien: Exception.

Q. Will you state why you entered into a contract of that kind in the war time period?

A. Because we needed the pipe. In case of acci- 11210
dent, we have to have certain pipe for repairs, don't we?

Q. I understood from the way this is set up here, that this is a contract not yet completed, is that correct?

A. Oh, no. Let me see that sheet, please. That contract I think is completed, but some payment was made of some delivery during 1919.

The Master: Was that a high or low price, that contract?

The Witness: That price was $60.10—it was $49.

The Master: Well, I mean was that high or 11211
low, compared with prices for that same material during the year 1919?

The Witness: Low. The present price, September 25th is $60.10.

The Master: So it was good business to have made the contract in the war time?

The Witness: Yes, $11.10 a ton was saved.

Q. You produce here on Exhibit 287 percentages purporting to show increase in 1918 over 1913, of the lowest and highest prices. Have you prepared the weighted average prices for 1913 and 1918, so that

you could tell us or read to us those averages for 1913 and 1918, for purposes of comparison?

Mr. Ransom: I object to the question as having been already covered.

The Master. I will let him answer.

The Witness: I have not prepared it.

Mr. Ransom: As to certain figures that have been given, the weighted averages.

The Master: When the witness says, "I don't know," what is the use? Let him answer it.

Q. Counsel began his questions in reference to
11213 these exhibits by asking you about mill prices. Are any of the prices on these two exhibits 286 and 287—I don't know whether I have got the right numbers.

The Master: I don't think you have got the right idea, either. The witness testified over and over again that these are the limit prices.

Mr. Ransom: There are no mill prices on there.

The Master: The limit prices, specifically stated over and over again.

Mr. O'Brien: I know, but we have got different answers at different times, and I want to give the witness a chance to answer.

11214 The Master: He doesn't require that chance.

Q. Will you say why as to wrought iron pipe and steel pipe, you put in here in this exhibit the list price less a certain percentage for 1913 and 1918?

Mr. Ransom: Exception.

The Master: Objection sustained, upon the ground that the record is perfectly clear to the effect that in discussing prices of these articles they always discussed them at list less a discount, and that applies to quite a number of articles of merchandise subject to purchase and sale in this community.

Q. Then are we to assume that there are no deductions, discounts, on anything else in any of these articles or commodities named in these exhibits?

A. Right.

Q. There is no promise of deductions yet to be made?

A. There is not.

Q. Will you tell me when the company began to use wrought iron pipe instead of steel pipe for services?

Mr. Ransom: Objected to.

The Master: Objection sustained. 11216

Mr. O'Brien: Exception.

Q. Do you know when they began to use wrought iron pipe for services?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Q. Have you ever figured out the actual saving that might be obtained if the company had used steel pipe instead of wrought iron pipe for services, and called it to the attention of the engineers?

The Master: Objection sustained. If you were to find, Mr. Gawtry, that you could buy the steel pipe for 50 per cent less than the wrought iron pipe, and the engineering department said they 11217 wanted wrought iron pipe, what would you buy?

The Witness: I would buy wrought iron. I would not touch the steel pipe.

The Master: Next question.

Q. Mr. Gawtry, have your business relations with the company ever led you into figuring out the cost that might be lessened by using other processes of making gas?

Mr. Ransom: The same objection to this line.

The Master: Objection sustained.

Mr. O'Brien: Exception.

11218 Lewis B. Gawtry, Cross.

Q. Have you taken up and made a study of that in any way?

The Master: Objection ssutained.

Mr. O'Brien: Exception.

Q. Did you—have you had anything to do with the manufacture of toluol for the government?

Mr. Ransom: I object to going into that at all with this witness.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, it is quite admissible if they made purchases in connection with
11219 the toluol producing business. I am anxious to find that out.

The Master: Ask him that question.

Mr. O'Brien: This is preliminary to it.

The Master: Ask the question directly. Did you buy any material that was required by the government for the manufacture of toluol?

The Witness: I did.

The Master: What did you buy?

The Witness: Chiefly the material required in the gas making business, because that is what toluol came from.

Q. In other words, did you buy anything especially
11220 for the manufacture of toluol, other than you bought generally for the making of gas?

The Witness: Not that I recall, except construction materials.

Mr. Ransom: Toluol is taken out of gas.

Mr. O'Brien: Oh, that comment need not be made. We know what toluol is made out of, Judge. They set up a plant, didn't you?

The Master: Next question?

Q. You set up a plant in the company for the manufacture of toluol?

Mr. Ransom: I object to going into that with this witness.

Mr. O'Brien: This is preliminary to finding out how much money was spent under this man's direction in the purchasing of the equipment to make toluol.

The Master: Objection sustained, if that is the purpose.

Mr. O'Brien: Exception.

Q. State, Mr. Gawtry, what material was bought in the past two years by the Consolidated Gas Company for or in connection with the making of toluol? 11222

The Master: Objection sustained.

Q. I don't mean coal now, or the things that enter into the making of gas, but I mean equipment?

Mr. Ransom: I object to that line of inquiry.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Was there any machinery bought?

The Master: Objection sustained.

Q. By you for the company, or under your direction, for the making of toluol?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. O'Brien: Exception. 11223

Q. Was there any bricks, cement, lumber, steel entering into building construction, purchased by you in connection with the manufacture of toluol by the complainant company?

The Master: The objection is sustained, and the Master requests counsel not to ask any more questions on that line, because the questions already asked indicate that the Master's ruling will be the same, and it is a waste of time to proceed any further. I will not receive any testimony from

this witness as to expenditures for the plant to make toluol.

Q. I ask the same questions with regard to the Astoria plant, Mr. Gawtry, whether you purchased any material of any kind for the making of toluol? I am not talking about the gas materials, such as coal or oil?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Q. Have you purchased for the Astoria plant any of the materials that they used in setting up the equipment for the making of toluol for the United States

11225 government?

The Master: Objection sustained.

Mr. O'Brien: Your Honor, this is a very important matter.

The Master: I don't think so.

Mr. O'Brien: This is going to figure in this case.

The Master: I don't think so.

Mr. O'Brien: Well, I assure of that from my knowledge of the situation.

The Master: In any event, I rule it is not proper cross-examination.

Mr. O'Brien: I am asking him, confining my-

11226 self solely to the purchase of materials, and he has put himself in here as a man who has purchased all of the materials.

The Master: I stand by my ruling.

Q. Let me ask you now, Mr. Gawtry, whether there is anybody else connected with the Consolidated Gas Company who makes a business or has authority to purchase materials?

Mr. Ransom: I object to the question as having been asked several times.

The Master: I think it has.

Q. Other than gas and oil, which is Mr. Addick's hobby?

The Master: Objection sustained as fully covered.

Mr. O'Brien: Exception.

Q. During the period covered by the exhibits that have been offered in evidence, since you took the stand, have there been any materials purchased by others in the company than yourself?

The Master: Objection sustained, and the Master again calls attention to the fact that that same question has been asked twice. 11228

Q. Are reports sent in to you from time to time from the manufacturing end or the commercial end of the business as to purchases?

Mr. Ransom: I make the same objection, as fully covered.

The Master: Objection sustained as fully covered.

Q. Is the matter of stationery and supplies of the commercial branches part of your jurisdiction?

A. It comes right through the purchasing department, yes.

Q. You haven't set them up in these schedules, have you? 11229

A. No.

Q. Did you make the contracts for printing?

A. We do.

Q. And that is a substantial item of expense?

A. Not very large compared with the many others, no.

Q. Well, are you able to state what proportion it is of your general expenses?

A. No, I could not tell you.

Q. Roughly?

A. Not roughly, no. I could not guess at it. I can't guess at those things. I don't know.

Q. Well, is there some one man under you that has particular charge of that matter?

A. The purchasing agent is posted on them in great detail.

The Master: Who is that, Macklin?

The Witness: Yes.

Q. Macklin would make a good witness in this case, wouldn't he?

The Master: Objection sustained.

11231 Mr. O'Brien: Exception.

Q. Are you able to state any details as to the contracts for stationery and other supplies?

A. The type of paper is secured, and we get bids on the printing, and those are submitted to me by the man who has charge of that, and he makes his recommendation, I go over them, and if they think well of them, they are submitted to the executive committee before they purchase.

Q. Well, do you have charge—do you make any contracts for the other affiliated companies on the question of supplies and stationery?

A. No.

11232 Q. Have you given us all of the details as to the purchases made by you for affiliated companies?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Gawtry, you have not included in these exhibits the relative prices of gas appliances of various types?

A. No, because it varies so, there are so many different kinds of appliances. There are as many different kind of appliances as—I was going to say hairs on my head.

The Master: Better not say that, because you haven't got enough to talk about.

The Witness: There are a good many.

Q. The gas company does not sell so many different kinds, do they?

A. I beg your pardon?

Q. The gas appliances sold to consumers do not differ so much as that, do they?

Q. Yes, if you took a look through one of those show rooms you would see the different kinds on exhibition.

Q. Well, I go through the houses where they are used and see the different types.

A. No, there are many different types. Go 11234
through the show rooms and you will see what we sell.

Q. I have been through the show rooms, these expensive show rooms, and saw what you show there, not what you sell.

A. Well, there are many of them.

Q. Have you made a study of the cost of appliances?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Gawtry, this last column on this exhibit here called the "Price last actually paid in 1919," showing certain figures opposite the 27 items, gives no indication of the time the contract was made or the 11235
original price of the article mentioned?

A. That sheet does not show it.

Q. For aught that appears in these exhibits, this price might have been the price agreed upon last year?

A. Yes.

Q. Or the early part of this year. The answer is a nod of the head?

A. Yes, I said.

Mr. Ransom: Are you referring to Complainant's Exhibit 289 for identification?

Mr. O'Brien: I think that is the one.

Q. And these figures in that last column were taken from what source?

Mr. Ransom: That has been fully covered. I object.

The Master: The objection is sustained. That has been fully covered.

Mr. Chambers: Would your Honor tell us what the testimony is on that?

The Master: I will not.

Mr. Chambers: Whether it is by contract or quotations?

11237 The Master: It is both. In the last column?

Mr. Chambers: Yes.

The Master: It is either contract or actual purchase.

Mr. O'Brien: It ought to be a voucher.

The Master: I am not in doubt about it and I do not want any more of it.

Q. Was it from vouchers at all?

A. Vouchers, actual bills paid, actual vouchers.

Q. Were you consulted at all, Mr. Gawtry, concerning the making of the contracts for construction, when the contract bids are submitted?

Mr. Ransom: I object. That has been fully

11238 covered.

Q. (Continued.) Like the office building at 15th Street and Irving Place? Like the building at 57th Street, where they have an office, a new office there. Were you consulted about the letting of those contracts?

A. I was not.

Q. Do you happen to know whether they submitted a flat bid or whether they gave you a figure and then set forth details that would show you the prices of construction?

Mr. Ransom: I object to that.

A. I do not know.

Q. You were not consulted at all about all of those matters?

A. I am not on the building committee. There is a building committee that has charge of that.

Q. They do not come back to you and find out how much you are paying for bricks, cement and other things in the purchasing department?

A. The engineer does that before he submits the figures.

Q. I am talking about you, as far as you yourself are concerned. They have not consulted you about 11240 that?

A. They have not.

Q. You figure only on the retail work or alterations?

Mr. Ransom: This has all been gone over.

The Master: Objection sustained; it has been all covered.

Mr. O'Brien: Exception.

Q. Do you purchase supplies for the office building?

Mr. Ransom: I object.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Do you purchase supplies for the kitchen and 11241 restaurant?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. It is a fact, is it not, Mr. Gawtry, that the restaurant is running at a loss?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Gawtry, does your work take you over into the expense account of the officials?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, I submit that it is proper for me to ask the witness as to just how far the field of the purchasing department goes.

The Master: Yes, it is proper.

Mr. O'Brien: I am not to assume simply because he said it is the purchasing department—

The Master: It is proper, but according to my ruling it has been fully covered.

Q. Will you state what the salaries of the individual officers are, Mr. Gawtry?

11243 Mr. Ransom: I object to the question.

The Master: Objection sustained.

Q. Has your purchasing staff increased or diminished during the last year?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. How many were in the purchasing department in 1913?

The Master: Objection sustained.

Q. In 1914, 1915, 1916 and 1917?

Mr. Ransom: I object to all this line.

The Master: Objection sustained.

Q. Do you know any other gas company in the

11244 country that pays a man $15,000 for your work?

The Master: Objection sustained, and I will not permit it to be asked. I will not permit any more questions on that line to be asked.

Mr. O'Brien: Your Honor, I am making the contention here—

The Master: I do not care what your contention is.

Mr. O'Brien (continuing): That this salary is money thrown away, that it is a sinecure position.

Mr. Ransom: That statement is an imposition on the Court.

The Master: If counsel for the complainant will only take his seat and not interrupt the Master may be able to control this proceeding. I have ruled on that, and I do not want any more questions on it.

Mr. O'Brien: Is your Honor ruling out the question because it is improper to attack the salary paid to the witness?

The Master: I have ruled out the question.

Q. Who fixes your salary, Mr. Gawtry? 11246

The Master: Objection sustained.

Q. Is it fixed by executive order?

The Master: My last ruling covers that question. It ought not to have been asked.

Mr. O'Brien: Exception.

Q. Will you state what Mr. Macklin's salary is?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Q. Will you state, Mr. Gawtry, what the total expense of the purchasing department is, in salaries and pay roll?

The Master: Objection sustained.

Mr. O'Brien: Is your Honor's ruling based 11247
on the fact that the books are in evidence?

The Master: It is based on the fact that I do not think it is a proper line of cross-examination, and in some instances the subject has been fully covered.

Mr. O'Brien: Well, I anticipate when we get the bookkeeper on for cross-examination, or Mr. Teele, or somebody else, we will be told that we should have asked the purchasing agent when

11248

he was on the stand, what the expense of his department was.

The Master: We will see when we get to it.

Q. Will you state how the total payroll of the purchasing department compares in 1919, with 1917, 1916, 1915 and 1914?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Mr. O'Brien: Is that on the ground, your Honor that we have an opportunity to examine into the books and find out for ourselves?

11249 The Master: It is on the grounds already stated.

Mr. O'Brien: That is not proper cross-examination?

The Master: Or else has been fully covered in other ways.

Mr. O'Brien: Of course, you have accepted the witness as an expert here, not only as a witness of fact, but as a giver of opinions. The interest of the witness in the shape of his highly salaried office, and all that, has a bearing on the case, and is part of a valuable record—

The Master: Yes.

11250 Mr. O'Brien: Well I note an exception

I suspend herewith the privilege of calling the witness under the limitations prescribed as to others.

The Master: Have you any other questions to ask?

Mr. O'Brien: Not to-day.

The Master: Have you any questions o ask, Mr. Chambers?

Mr. Chambers: No.

The Master: Have you, Mr. Clark?

Mr. Clark: Yes.

CROSS-EXAMINATION BY MR. CLARK:

Q. Mr. Gawtry, on Exhibit 287, the Berwind-White Coal Mining Company, in January the price delivered was $6.87, price at the mine, $4.43. Was that a government price.

A. It was not. It was a very high price which was in effect before the government came in. The government came in and lowered the price?

The Master: The government put it down to 3.024, apparently?

The Witness: Right. 11252

Q. Yesterday in the record I asked you about that same contract; do you remember?

The Master: What page?

Mr. Clark: Page 149.

Q. I say, "What was the reason that you paid the Berwind-White Company so much more than the Westmoreland Company in both those years," referring to 1917 and 1918?

"A. Because the Westmoreland contract was made three years prior to that at a very low price. It paid us handsomely; the company saved hundreds of thousands of dollars. The Berwind-White contract was made during the war at abnormal prices, any price as fixed by the government." 11253

"Q. Those were government prices?

A. Government fixed prices." Yesterday you testified that was a government price.

The Master: No, he did not.

The Witness: I did not so understand it.

The Master: He said the government had fixed prices, and then he proceeded to say that the government reduced prices.

Mr. Clark: He says the Berwind-White con-

tract was made during the war at abnormal prices, any price fixed by the government.

The Master: You have to read the entire context.

The Witness: In April, 1918, the government fixed the price.

By Mr. Ransom:

Q. The government price went into effect as to the Westmoreland in April.

A. Yes.

By Mr. Clark:

11255 Q. You didn't mean by your testimony to state that the Berwind-White contract was made according to government fixed prices?

A. Quite the contrary.

Q. Was not the government fixing any price at that time on bituminous coal?

A. Yes. Mr. Peabody, prior to Mr. Garfield's administration, fixed some prices at very much higher prices than Mr. Garfield.

Q. On your direct examination you referred to the price fixed on bituminous coal in January, 1918, at page 3395 of the testimony, where you said that at the beginning of 1917, the price on bituminous was

11256 $2.70 at the mines.

A. That is right.

Q. Did you buy any coal at $2.70 at the mines in January, 1917.

A. In January?

Q. Yes.

A. We had some old contracts out, which were below that price.

Q. And you had this Berwind-White contract considerably higher than that price?

A. Considerably higher. That price was made

sometime prior to that. The price was fixed on October 27, 1917, at $2.70.

Q. Did not the fixing of the price by the government have the effect of decreasing the price under a contract, as well as increasing it?

A. That was an old price running from April to April. They do not run from January to January, they run from April to April. That was made from April, 1917, running to April, 1918. The government did not interfere with the prices of contracts. It did interfere with the deliveries of contracts, but they did not interfere with the prices. You notice that 11258
the Berwind contract, when it expired in April, 1918—it does not show there, but the price was made at the government price.

Q. Then it went down, according to your testimony on your direct-examination, from $2.70 to $2.60; is that correct?

A. Yes.

Q. Yet here in April, where you say that the Berwind-White contract went down to the government price, you have the price stated as $3.02.

A. Yes; but you must not forget that the price made by the government was fixed per net ton at the mines, 2000 pounds. We buy our coal here in the East 11259
on 2240 pounds, gross ton. $2.70 net at the mine is 3.024 gross.

The Master: I think that has been fully covered.

Q. How did you get notice of the government-fixed prices?

A. They were published.

The Master: You need not go into that any more.

Mr. Clark: I do not think it has been touched on at all.

11260

The Master: I do not think you need touch on it.

Mr. Clark: It seems to me it should be proven before these are allowed in.

The Master: I don't think so.

Mr. Clark: I don't see how the Court can take judical notice of it.

The Master: Public official records.

Mr. Clark: It should be proven as the basis of these exhibits

The Master: I don't think so.

11261 Mr. Clark: That is the basis on which these prices were fixed. The contracts do not prove anything without government prices

Mr. Ransom: Here we are in a Federal Court—

The Master: I think it is covered.

Mr. Clark: I move to strike out these exhibits on the ground that the government prices have not been established by any competent testimony.

The Master: Motion denied.

Mr. Clark: Exception.

Adjourned to October 2, 1919, at 9:15 A. M.

11262

Last Complainant's Exhibit 289.
Last Defendant's Exhibit M. M.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 11263

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, October 2, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 11264
MR. O'BRIEN, of Counsel for defendant Swann.

ARTHUR W. TEELE, resumed the stand.

Mr. Chambers: Before you go on with Mr. Teele, is this further direct?

Mr. Ransom: The Master directed that Mr. Teele be produced on September 30th for cross-examination. Mr. Teele's cross-examination has been held in abeyance pending the completion of Mr. Gawtry's cross-examination and re-direct on September 30th and yesterday. 11265

Mr. Chambers: Now I want to call the Master's attention to the way in which the case is being tried. The only witness we have really finished with, witness of any importance, is Mr. Aldrich. Now, Mr. Teele has not testified—

The Master: Oh, you have finished with Gawtry.

Mr. Chambers: Not entirely.

The Master: Oh, yes, you have.

Mr. Chambers: They probably will recall him. He has a way of recalling these witnesses, and the record is becoming confused.

The Master: So far as I know you have finished with Mr. Gawtry and you have finished with most of the other witnesses.

Mr. Chambers: We have not finished with any of the deputy tax commissioners.

The Master: Oh, yes, you have. If you are going to complain that I suspend the cross-examination of witnesses for your convenience I will not do it any more.

11267

Mr. Chambers: You have not waited—I haven't said that.

The Master: What is your point?

Mr. Chambers: My point is that Mr. Teele has covered but the year 1918. Isn't that so?

The Master: Yes.

Mr. Chambers: Now, if Judge Ransom is going to recall him for 1917, 1916, 1915 and 1913, I want him to do it before we begin our cross-examination. I want him to complete with this witness. I would like to have him complete his case with one witness, and then we will go after him and cross-examine him, but why should we cross-examine him concerning 1918, and then have Judge Ransom recall him for 1917, and then we cross-examine for 1917, and then he recalls him for 1915 and 1916?

11268

The Master: You made your point several seconds ago. Do you intend to call Mr. Teele to testify to tabulations for prior years?

Mr. Ransom: It is not my present intention to call Mr. Teele with respect to anything prior to 1918.

The Master: That answers that.

Mr. Chambers: There is no assurance about that.

The Master: You can't get any assurance. That is his present intention, and I must assume that Judge Ransom is giving us a truthful statement of his intentions.

Mr. Chambers: I am not challenging that, but Judge Ransom hasn't very much to say about how the case is being conducted from the complainant's standpoint.

Mr. Ransom: Judge Ransom has absolute say 11270
as to how the case is being conducted from the complainant's standpoint.

Mr. Clark: Is the testimony as to 1918 going to satisfy the Master on the question of operating expense?

The Master: I am not passing on that just yet.

Mr. Clark: It is very vital.

Mr. Ransom: I take it that the Master does not wish at this time to go into any questions aside from operating expenses. Therefore as to many matters on which I expect to call Mr. Teele other than the operating expenses he has not thus far 11271
been interrogated.

The Master: Do you intend to call him on some other points?

Mr. Ransom: There are some points on which he will be called.

The Master: Then I think perhaps I will suspend the cross-examination until you are through with him.

Mr. Ransom: I think, so far as this Exhibit 205, and so far as the operating expenses for 1918, which of course presents a basic question

in this case, are concerned, that we ought to finish on that.

The Master: What is the basic question in this case?

Mr. Ransom: I say the basic question, or a basic question is 1918. Of course you go broader than that—

The Master: It is not basic at all.

Mr. Clark: It is an unusual year.

Mr. Chambers: Ex-justice Hughes said it was an abnormal year and you could not base any
11273 case on it because it would be allowing the gas companies to take advantage of a public calamity.

Mr. Ransom: But Justice Hughes said the company was entitled to earn a fair return in an abnormal year like 1917 or 1918, just the same as any other year.

The Master: Don't let us get into that. It is a question of order of proof here. What else do you expect to call Mr. Teele on?

Mr. Ransom: With respect to additions and withdrawals of capital.

11274 The Master: The only thing that is in my mind is this, Mr. Chambers. I could readily agree with Judge Ransom that cross-examination with relation to this tabulation ought to be had with relation to the tabulation so far as to get that clearly on the record, and ordinarily, if this was a question of following up the cross immediately on the finish of the direct, so that the cross followed the direct, I would be inclined to agree with Judge Ransom that that should be followed right away, so that the cross would be in connection with the direct, leaving the cross with

relation to other matters in connection with other matters when they are produced; but the trouble here with this record now as it stands is, that Mr. Teele's direct-examination is away off in another part of the record, and his cross-examination will be isolated, and later on will come the direct again, and upon application I might give them another adjournment, so of course as to that it will go off again. Now I think perhaps it would be very much better, if you intend to recall Mr. Teele, to let Mr. Teele go until you are ready to put in the other proofs. Then if they want an 11276
adjournment to analyze that other proof, to suspend the examination and make them finish the entire cross at one time.

Mr. Ransom: The reason Mr. Teele is produced here is that your Honor, at the time you received Exhibit 205 for identification, directed that the cross-examination of Mr. Teele be deferred until September 30th, and at that time, after the defendants had had their opportunity to go over Exhibit 205 for identification, the cross-examination should then take place, on last Tuesday.

The Master: I will further suspend his cross- 11277
examination until you put in the other proof that you expect to put in by him. Have you another witness?

Mr. Ransom: I have Mr. Brundage.

The Master: Has his cross been suspended?

Mr. Ransom: It was.

The Master: We will take that then.

Mr. Ransom: Mr. Brundage, whose cross-examination was likewise deferred by your Honor, pending the examination which was to take place during the recess allowed the defendants for the

purpose—Mr. Brundage is now produced by the defendants for cross-examination.

Mr. Chambers: We say the same thing that we said before. I am not prepared to cross-examine him; I do not know just exactly now what was left unfinished until I look it up. But I think he ought to finish with Mr. Brundage and clean up with him, then we will clean up with our cross-examination.

Mr. Ransom: I announced before that I was finished with Mr. Brundage.

11279 Mr. Chambers: You do not intend to recall him in this case?

Mr. Ransom: I have no knowledge of anything on which I intend to recall Mr. Brundage as a witness in this case.

Mr. Chambers: Of course, I cannot remember what we were on.

The Master: That is the trouble with these suspensions.

Mr. Chambers: I am not prepared now.

The Master: Suppose we find out whether Mr. Woods is on his way down. Meanwhile I will suspend Mr. Brundage's testimony, to give counsel a chance to refresh their recollection.

11280

(A recess was taken until 9:35 A. M.)

The Master: Mr. Teele having been called to the stand for cross-examination, Mr. Chambers took the position that he was not prepared to proceed with that cross-examination, and suggested that if Mr. Teele were to be recalled at any future time upon any other line of proof, the cross-examination be suspended until Mr. Teele had been recalled and his other proofs put in.

I am inclined to agree with Mr. Chambers in that respect, and I think perhaps it would be wise to suspend Mr. Teele's cross-examination until he is recalled for other matter indicated by counsel for the complainant, and will so direct.

Mr. Ransom: That is done over my objection, and I except.

The Master: That is done over Mr. Ransom's objection and exception. Mr. Brundage has now been recalled to the stand for cross-examination, and Mr. Chambers takes the position that he is surprised at the calling of Mr. Brundage at this 11282
time, and is not prepared to proceed with his cross-examination, practically stating that he did not expect to go on with him this morning, and wants an opportunity to read the record before he proceeds. The Master is impressed with that position, and is inclined to suspend that cross-examination to give Mr. Chambers and other counsel an opportunity to read the testimony.

In this connection the Master is of the opinion that the practice of suspending cross-examination is a bad one, and he does not intend to follow it in the future, but will expect counsel for the defendants to have their case prepared upon all of 11283
the lines which will probably be touched upon by the complainant, and be prepared to proceed with the cross-examination of witnesses as they are called.

The Master has inquired of counsel for the complainant if he has any other witness with which he may proceed at this time, and counsel has stated that Mr. Woods, his next witness, is not in court and had not expected to be called so early in the day. Under the circumstances I

am disposed to postpone further hearing until two o'clock this afternoon, and hold an afternoon session today instead of a morning session. I will hear any suggestion on that point. I will give Mr. Ransom the first say.

Mr. Ransom: All I want to say is this: The production of Mr. Teele as a witness at this time is in pursuance of the direction of the Master embodied in page 3364 and also page 3332 of the record, on both of which occasions the Master directed that the cross-examination of Mr.
11285 Teele be suspended until the 30th of September. The production of Mr. Brundage is in pursuance of the direction of the Master given September 15th, at page 3037, folio 9111, the adjournment having been allowed for the specific purpose indicated by the Master at that time, of allowing the defendants opportunity to examine the tabulations, books, vouchers and underlying data, with a view to the cross-examination of Mr. Teele on the 30th of September and Mr. Brundage thereafter.

The Master: Mr. Chambers, have you any objection to the disposition I am about to make?
11286 Mr. Chambers: Just this, that I would like to know whether Mr. Woods is to be called this afternoon for cross-examination.

Mr. Ransom: No, Mr. Woods is to be called this afternoon for direct-examination.

Mr. O'Brien: That is just the point I was going to call to your Honor's attention. If we look back over this record we will find there was an adjournment taken of four days to enable the witness Teele to properly prepare himself to testify on the direct-examination; that for the accommodation of himself, the complainant with-

drew Mr. Woods, his witness, from the stand, and did not complete his direct-examination; that the examination of Mr. Woods on the direct is the only examination not yet completed, and would be today in the ordinary and logical course of events the proper thing to take up.

The Master: That is what I wanted to take up at two o'clock.

Mr. O'Brien: The examination yesterday was continued at the appointed hour, in order to give the witness Gawtry an opportunity to take a va-
cation for two weeks, as he had arranged; that 11288
the adjournment until October 1st was not taken for the benefit of the defendants or at the request of the defendants. The recess from Friday, I think it was, the 19th, until October 1st, was not taken at the request of the defendants, but for the accommodation of the complainant and the Master.

The Master: Now I must interrupt you.

Mr. O'Brien: If I am incorrect, I want to correct it now, your Honor.

The Master: That fact in reference to that is that I had repeatedly announced that upon the re-
quest and insistence of counsel for the defendants, 11289
who insisted they should have an opportunity to look at the schedules that have been put in evidence, I would arrange a week's adjournment. I tried to arrange that adjournment at a time when I expected to be away, so that there would not be a double adjournment. The adjournment was primarily made at the request and for the benefit of the defendants. It was made at the time it was because the Master contemplated that he might have to be away at some time, and had

11290 Arthur W. Teele, Resumed.

arranged to do both things at one time. That is the fact.

Mr. Ransom: It was not for the accommodation of the complainant.

The Master: I leave the complainant out of it.

Mr. O'Brien: I call your Honor's attention further to the fact that the inventory which was directed by the Judge of the District Court to be furnished us on May 16, 1919, was not furnished us until we had continually demanded and per-
11291 sisted in getting the inventory; that when it was furnished—

The Master: One moment. I am going to interrupt you. I want to know if you have any objection or anything to say with reference to my adjourning this matter until two o'clock this afternoon, instead of going on with the cross-examination this morning.

Mr. O'Brien: I would say, your Honor, it is going to interfere a great deal, arranging these hours indiscriminately from day to day, with the work that I have.

11292 The Master: It does with mine too.

Mr. O'Brien: Just to tell us now, after I have made arrangements for many matters this afternoon, that you will adjourn until the afternoon, is going to seriously interfere with my arrangements.

The Master: That is the point I want to make.

Mr. O'Brien: It being the October term, too, and a great many matters are coming up that need attention.

The Master: Mr. O'Brien, all the counsel in this case will have to adjust their affairs and their other engagements so as to finish this case, just

as the Master is doing. The Master has three cases on the calendar for Monday morning. Two of them are of substantial importance; the third not quite so important. But the Master, appreciating his obligations to counsel in this case, to the public perhaps, has arranged to have some one else try those cases.

Mr. Hayward: If the Master please, you could not have made that arrangement this forenoon, could you, for an engagement this afternoon?

The Master: No.

Mr. Hayward: You could not have made it 11294
after you came in this morning?

The Master: I have engagements for the afternoon, but having in mind the importance of this litigation, I am going to shift my engagements immediately upon arriving at my office, and make them for tomorrow afternoon.

Mr. O'Brien: I was going to respectfully submit, your Honor, that no matter what view you take of the allegations in the complaint, and the inferences that might be drawn from the allegations, there is not any reason in the world why, in any court, the complainant should be given the right of way over every other engagement, in 11295
every other case, that all of us may have, including yourself.

The Master: Yes, there is. The District Judge who made this order made it after argument before him, as a result of which he reached the conclusion that this case ought to be expedited. I am not a reviewing Court.

Mr. O'Brien: I submit if we meet tomorrow there is not any reason why we should gather up each sixty seconds and say we must not lose that

because this company needs the money more than somebody else.

The Master: I indicated to you gentlemen on Tuesday that I was disposed, if I could arrange it to have two sessions a day like regular court hours, from ten to one and two to five, and unless this case has progressed so that I can see the end of it, I will have to do that. I don't want to do it. I think the arrangement we have had for four hours a day, has worked fairly well, and we have gone along fairly well. I think we will do well
11297 with four hours a day in the long run, as well, probably as we can with ten to one and two to five. Well, we don't do as well as with six hours, but six hours is probably burdensome in a case like this, it is particularly on the Master, who did not expect to set aside all of his other business for it.

Mr. O'Brien: I was going to submit, your Honor, that the ordinary rate case takes about two years to try.

The Master: Yes, but this won't; I can tell you that.

11298 Mr. O'Brien: And adjournments are taken after schedules are put in.

The Master: Yes, but I won't do that.

Mr. O'Brien: And I call your Honor's attention to the fact that they have been amending their schedules right along, that the Teele schedule was seriously amended, I mean to say changed in vital matters during the progress of the case.

The Master: I am going to make the announcement now that I will adjourn this case until two o'clock.

Mr. Hayward: Before the Master closes that, I would like to ask if you feel like giving us an

indication of your opinion on the suggestion that has been made before, and made again by Mr. Maltbie this morning, and in which we think there is a lot of merit, that if we are going to cover a period of years, the same identical witness ought not to be recalled for one year and then another year, and like that. For instance, Mr. Teele, I have particularly in mind. If he is going to make up tabulations here, why, the cross-examination would perhaps be cut in one-fifth the time to put in all the years, and if he was cross-examined at one time. Does the Master think there is any 11300 merit in that suggestion? We all do.

The Master: I should like it if counsel for complainant will do so.

Mr. Ransom: I shall comply with that suggestion.

Mr. Hayward: Of course, Mr. Brundage, it is only the basic books he has put in.

The Master: His cross-examination doesn't amount to much.

Mr. Hayward: But Mr. Teele would, I think, save a lot of time.

Mr. Ransom: I shall not produce Mr. Teele for further cross-examination until I am pre- 11301 pared to put in by him any schedules that we expect to offer by Mr. Teele in this case, in relation to the operating expenses of the company.

The Master: In other words, when you recall Mr. Teele now, you are going to finish him?

Mr. Ransom: If your Honor feels that we should finish entirely and cover additions and withdrawals at that time, I can do that, yes.

Mr. O'Brien: Well, now, your Honor, this shuttlecock movement of witnesses by the com-

plainant is all to our embarrassment and confusion. He is assuming the power and permission to take them off and put them on again.

The Master: I understand that counsel for the complainant, so far as is possible, will follow the views of the Master and complete the proof now as to the cost of manufacture of gas. Is that right?

Mr. Ransom: I shall take up nothing else until we have finished on that.

The Master: That is what I should like to see.

11303 So that you gentlemen will understand now that that is the point, that all of the attention of the Gas Company itself will be directed to.

Mr. Ransom: Manufacture and distribution.

The Master: Manufacture and distribution of gas.

Mr. Ransom: Operating expenses.

The Master: So far as possible—

Mr. Ransom: For how many years?

The Master: So far as possible I should like to have the evidence go in first as to manufacture.

Mr. Ransom: It naturally would.

11304 The Master: Although I suppose Mr. Woods has to do with distribution, as well as manufacture, and I don't suppose we can divide it as closely as that.

Mr. Chambers: For the entire period.

The Master: I am not going to tell them how many years they have got to prove. That is up to them. All I can say is this, without knowing anything about what the proof will show when it goes in, I should imagine that in order to arrive at a fair judgment as to what it can fairly be

said to cost to manufacture gas, I cannot take one year. Now, that is all I can say.

Mr. Ransom: I do not suggest that you should.

Mr. O'Brien: Why not go farther and say that you have got a certain period you are going to cover in your proofs and give a fair indication to the defendants, so that they can do all their work at one time. Wouldn't that be a frank way of doing business with the defendants?

Mr. Ransom: You have been furnished schedules covering every year beginning January 1, 11306
1915, down to January 1, 1919. The 1919 schedules will be furnished to you just as soon as they are complete.

The Master: Then as I understand—

Mr. Hayward: Of course, the answer is that Judge Ransom was not ready to try this lawsuit when he began it, and he is not ready now, except by piecemeal, and we know it, and we want to get the best we can. Concede that.

The Master: As I understand, Judge Ransom has furnished counsel for defendants a schedule or schedules showing operating expenses since 1906. 11307

Mr. Ransom: Yes.

The Master: That I take it, means that his figures, that those are the figures which he claims indicate the cost of making and distributing gas since 1906?

Mr. Ransom: And I have put in evidence the books back to 1906.

Mr. O'Brien: Now, there is a good sample of the misleading way of the complainant's counsel. He says he put the books in evidence. Now,

all he put in was the operating ledgers, and standing alone, they cannot prove anything.

The Master: I know what he put in.

Mr. O'Brien: Why should not he make a declaration that we are going to put in issue certain years or all the years, and say that so that we will know it.

The Master: I am going to say this now. It is apparent to me from the statement of Judge Ransom that he intends to have the Master look at figures since January 1, 1906, and to consider
11309 figures since January 1, 1906, as bearing on the cost of distribution of gas.

Mr. Ransom: And the extent to which you feel you should go back of 1918 will be for your determination, and not either mine or Mr. O'Brien's?

Mr. O'Brien: You are speaking for the Master now.

The Master: You are going to hand me figures since 1906, aren't you?

Mr. Ransom: As to many matters, surely, yes.

Mr. O'Brien: The old evasiveness.

11310 Mr. Hayward: As to many matters. Now, what matters.

Mr. O'Brien: The old camouflage.

The Master: I am assuming now that Judge Ransom's attitude is that he will have in evidence since January 1, 1906, for the information of the Master as to the cost of making and distributing gas, and you gentlemen have got to assume that to be the fact.

Mr. Ransom: And these defendants were furnished these schedules in June and July, running

back to 1906, and were advised that they ought to check them up, and they have checked them.

Mr. O'Brien: Well, you vitally changed the schedules of 1918 on very important matters.

Mr. Ransom: We have not changed any schedules of 1918.

The Master: The situation is that you gentlemen ought to be prepared with your figures from 1906 to date, if Judge Ransom says he will be ready with them.

Mr. Maltbie: As to the point, as to being ready, taking 1918, the entire schedule put in 11312
by Mr. Teele for 1918, eleven pages were never supplied to us, and those eleven pages include one of the most important things, for instance, the allocation of taxes. Now, those same pages—

The Master: It is not important on that point.

Mr. Maltbie: Oh, yes, it is on the cost of making gas.

The Master: No, not on this branch of it that I am on.

Mr. Maltbie: Well, then, he cannot prove that it costs 80 cents to make gas in those years.

The Master: Well, that is up to him.

Mr. Chambers: If the Master will eliminate 11313
his taxes—

The Master: For the time being I am going to eliminate taxes. What I am after is not the overhead, not the invested capital, not the taxes that they paid to the city or state.

Mr. Ransom: Taxes are a very important element in operating expenses.

The Master: As a subsequent item.

Mr. Ransom: Not as a subsequent item. As a chief item.

The Master: Not very important after all.

11314 Arthur W. Teele, Resumed.

Mr. Ransom: These defendants cannot say you have got to pay six or eight cents for every thousand cubic feet of gas you sell in this city and state, to pay these taxes.

The Master: What I want to know first is, what are the materials that go into the manufacture of gas.

Mr. Ransom: That is the first thing to be shown.

The Master: How much is that? And the next thing I want to know is what are the items
11315 or elements that go into the distribution of gas? That is the next item. Then the next point that I get to is, how much is the charge against manufacturing and distribution of overhead? That means your superintendence, your executive salaries and the like. Then the next item you come to is the item which you say goes into the cost of manufacture or should be charged against it as additional to the material and labor, and in addition to the material and labor for distribution is the tax question. Then that is the next item. Then if there is something else, which you say ought to be added to that, that is
11316 another branch of it. When all those are added together we get to the point of knowing what it costs to manufacture and distribute gas, taking in all the items that you say ought to be added in. But the first thing that I am after hasn't anything to do with taxes; it has to do with the materials and labor that go into the actual making of the gas. That is what I am getting at.

Mr. Ransom: With respect to this afternoon, if I can get hold of Mr. Addicks to testify to the cost of gas oil and the contracts on gas oil, I shall expect to put him on.

The Master: All right, I don't care what you prove first.

Mr. Ransom: Or otherwise I will get Mr. Woods. I think Mr. Addicks' testimony ought to be taken, under your Honor's view, ahead of Mr. Woods' testimony.

Mr. Chambers: Well, then start in tomorrow morning fresh.

The Master: No, I will put in three hours this afternoon.

Mr. O'Brien: I have an appointment made for today. 11318

The Master: So have I, but I will change that.

Mr. O'Brien: I think it is certainly inconvenient.

The Master: It is not convenient to me either. I will tell you, I have got to change all of my appointments.

Mr. O'Brien: Well, we cannot make—

Mr. Ransom: Would it be more convenient for the Master and defendants to hold an all day session tomorrow?

The Master: I can't do it tomorrow. That is why I am running a session today. I have got to do some things tomorrow afternoon that 11319
I cannot postpone. The things I have on this afternoon, although it is inconvenient, they will have to be postponed, that is all.

Mr. Hayward: Well, the things that probably the rest of us have got for this afternoon cannot be postponed, and could be tomorrow. So we have got the reverse English. We could come tomorrow but not this afternoon.

The Master: The trouble is that I am the boss, and you are not.

Mr. Hayward: I know that.

11320 Walter R. Addicks, Direct.

The Master: Now, I will make this closing statement, gentlemen, for your information. I am inclined to think that beginning with week after next I can begin to see how my calendars are running, and what I can do with reference to them, and depending on what progress we make next week, I am disposed to hold sessions from ten to one and from two to five, until we finish this case.

Mr. Chambers: Well, you cannot do so.

Mr. O'Brien: Of course, you will do it over
11321 our protest, your Honor.

Mr. Chambers: What you are going to do is to kill somebody off here, and then you will have a mistrial.

Recess until 2:00 P. M.

Afternoon session.

WALTER R. ADDICKS, called as a witness on behalf of the complainant, having been duly sworn, testified as follows:

11322 DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you reside?

A. Mt. Kisco, Westchester County, New York.

Q. What is your connection with the Consolidated Gas Company?

A. Vice President.

Q. How long have you been connected with the Consolidated Gas Company?

A. Since 1903.

Q. In what capacity are you at present engaged with the company?

A. Vice President.

Q. What if any, other official positions have you held with that company?

A. I am a trustee of the Consolidated Gas Company as well as being vice president, and I act as secretary to the executive committee, and I am technical advisor to the committee and the president.

Q. Are you an engineer?

A. I am.

Q. What has been your academic and technical education?

A. At the Episcopal Academy in Philadelphia, and at the United States Naval Academy. 11324

Q. Were you graduated from the United States Naval Academy?

A. I was graduated from the United States Naval Academy in 1882, in the Engineer Corps.

Q. What have been your occupations and experience since graduating from the Naval Academy?

A. I remained in the Navy about a year and a half as a cadet engineer in the service, with the first rank above graduation. Then I left the service and entered that of the Pennsylvania at Altoona.

Q. What department of the Pennsylvania Railroad?

A. The motive power department, general superintendent. 11325

Q. How long were you with the Pennsylvania Railroad?

A. About four years.

Q. Then what did you do?

A. I then went to Boston as engineer to the Beacon Construction Company, which was the company that constructed the Bay State Gas Company's works at Boston, Bay City Gas Company of Massachusetts, not of Delaware.

Q. Then after that?

A. Later I went to Chicago for about three months and worked in the gas works for that period of time.

Q. The Chicago Gas Works?

A. Yes, twelve hours a day, seven days a week for about three months.

Q. Then what did you do?

A. I went back to Boston and designed and fitted up the Boston plant of the Bay State Company.

Q. Were you engineer of the Bay State Company?

A. I was engineer later of the Bay State Gas Company, and also engineer of the South Boston Gas Company, the Roxbury Gaslight Company, the Dorchester Gas Company; I was engineer of distribution
11327 of the Boston Gas Light Company; I was superintendent of the North End station of the Boston Gas Light Company. Later I became engineer of the Boston Gas Light Company. I was likewise engineer of the Brookline Gas Company, both the gas and electric department. I was consulting engineer for the New England Gas and Coke Company, which is a by-product process, and of the Massachusetts Pipe Line Gas Company, which is a distributing company for the coke company.

Q. What would you say as to the size of the Boston Gas Light Company? Was it the largest in New England?

11328 A. It is the largest in the New England States.

Q. Have you had practical experience in the operation of gas plants in these various capacities?

A. I have.

Q. Would it be true to say that you had worked in practically every department of gas company operation?

A. I have.

Q. Except perhaps the treasurer's office.

Mr. Chambers: Why not let him tell instead of your testifying.

A. With the possible exception of the treasurer's office and accounting.

Q. Have you constructed buildings, erected apparatus and laid distributing facilities for gas business?

A. I have.

Q. Have you purchased materials and employed labor in the construction and operation of gas plants?

A. I have.

Q. What, generally have been your duties and functions in relation to the business, operations and property of the Consolidated Gas Company, since you became vice president?

A. Having become, originally, and being made vice president in the absence of the president, I became 11330
acting president of the company for a number of years. All during the period of time I have been connected with the company I have attended the meetings of the executive committee, acting as secretary for that committee, and from time to time I have had special departments under my control. At one time I had charge of the industrial appliance department, which was later merged into the commercial department. I have been at one time president of the United Electric Light and Power Company; also the Municipal Lighting Company. Latterly I have had particular charge of the building of the garage of the company.

Q. Have you acted as a member of the board of 11331
trustees of the company?

A. I am a member of the board of trustees of the company as well.

Mr. O'Brien: Pardon me; you said you had something to do with the erecting of a garage?

The Witness: No; I have charge of the garage operations. They report to me in regard to it.

Q. Have you for a number of years had in charge the purchase of oil for the Consolidated Gas Company?

A. I have, not only oil, but also certain residuals, excluding coke.

Q. Has it been the practice of the Consolidated Gas Company to purchase its gas oil at irregular times and in quantities limited to immediate requirements, or to purchase gas oil on a contract extending over definite periods?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Exception.

Q. What has been the practice of the company?

A. As a rule the contracts are made over a period
11333 of time ordinarily not less than twelve months, and for specific quantities of oil delivered within that period at a stipulated price.

Q. Have you negotiated the agreements on behalf of the Consolidated Gas Company during the period of your connection with the Consolidated Company?

A. I have since 1904, which was the year after I became connected with the company.

Q. Were the results of your negotiations submitted to the approval of the executive committee of the company?

A. In every case.

Q. Did your negotiations for the purchase of oil
11334 for the Consolidated embrace also oil requirements of the gas companies affiliated with the Consolidated, other than the New York Mutual Gas Light Company?

A. For the past six or seven years that is true. Prior to that time the contract for Manhattan and the Bronx and Long Island City companies did not include Westchester County, but latterly Westchester County has been included, and since the New York and Queens Gas Company was taken over by the Consolidated, that has been included.

Q. That is to say, the contract which you made is for a quantity estimated to cover the oil requirements of the different companies as well as the Consolidated.

A. That is correct.

The Master: The New York Mutual is not included?

The Witness: Pardon me; I did not include the New York Mutual. That is not included.

The Master: I wanted to make it clear.

The Witness: I did not include it in my answer regarding territory.

The Master: That is why I followed with my question.

The Witness: That is correct.

Q. What reasons have the Consolidated to regard 11336
it as advantageous to purchase oil upon this basis of including the requirements of other companies?

Mr O'Brien: That is objected to as incompetent, irrelevant and immaterial, and as calling for a conclusion from the testimony.

The Master: I will sustain it on the ground that it is immaterial.

Mr. Ransom: Here is a man who is a member of the board of trustees.

The Master: I will let you ask him was it or was it not advantageous in his opinion.

Mr. O'Brien: Let him state the fact.

The Master: Let him state it as his opinion. 11337

Mr. O'Brien: On what ground will your Honor allow that?

The Master: As to whether it was more advantageous to buy for one company or all, or whether there was any advantage. Was there any advantage in buying for all the companies?

Mr. O'Brien: Wait a minute, Judge. I submit respectfully that there is a conclusion that the Court is to draw and not the witness. That is what we are here for. That is what this case is being tried for, to find out whether it is advantageous or not.

The Master: When we get through with Mr. Addicks' testimony, his testimony will either be in support of a fact or it will not. The mere fact that it is put in the shape of an opinion at this time does not mean very much of anything. The witness has testified that he purchases and has for some years for all of the allied companies. I will allow Judge Ransom to ask him why did he purchase in that way. Ask him that, why did you purchase in that way?

Mr O'Brien: My objection goes to three or
11339 four different points. One of them is, that the time spent in what he did for some other company is not in this case.

The Master: That is all right. I understand your point.

Mr O'Brien: He may state when he bought oil and in what quantities and what the price was, and what the market was, and things of that kind, from which you might draw your own conclusion. But that brings up the question of allowing him to put into this cold record that it was advantageous to purchase in that way, and of course that calls for a conclusion.

11340 The Master: I am going to let the witness state here what has been the practice in buying oil in quantities covering the requirements of the affiliated companies.

Mr. O'Brien: I take an exception.

Mr. Chambers: I wish to object on the ground it is not a question for opinionated evidence.

The Master: I am not asking for his opinion, but to state as a fact whether he pursued that policy.

Mr. Chambers: That is a reason and calls for the operation of his mind.

The Master: I will let the answer stand over your objection.

Mr. Chambers: I take an exception.

The Witness: It insures a supply of oil to all companies, and of a uniform quality; the first being extremely important to the Consolidated Gas Company, with respect to supply, the gas that other companies have to supply.

The Master: The second reason must be equally important. When you mix the gas of other companies you want uniform quality.

The Witness: Yes. 11342

The Master: It is just as important as the supply, isn't it?

Mr. O'Brien: Your Honor is putting the same expert opinion in this record.

The Master: It is perfectly apparent.

Mr. O'Brien: I am going to enter my objection and exception.

The Master. If this company draws gas not alone from its own works but from other companies, the value of uniformity in quality must play a part.

Mr. O'Brien: I would not dare to assume an engineering knowledge of those things, and an 11343
idea of buying for a number of affiliated companies in order to get the right kind. That involves some very deep, vital, crucial questions in this case.

The Master: I will let you cross-examine Mr. Addicks to attack his credibility.

Mr. O'Brien: I object, of course, to this question to the witness because it calls for a conclusion, and I take an exception to your Honor's ruling, and I move to strike out the last two questions and answers.

The Master: Motion denied.

Mr. O'Brien: The witness was asked to state the reasons why and he proceeds to give a flat statement that they buy in such and such a way, which secured this and this quality or quantity.

The Master: The motion is denied.

Mr. O'Brien: I take an exception.

The Master: The witness has stated that the reason for the purchase of quantities to cover the requirements of the affiliated companies as well as the Consolidated was two-fold. One to assure themselves of supplies, and, second, to as-

11345 sure themselves of the uniformity of quality. Is that it?

The Witness: Yes.

Mr. O'Brien: If I might respectfully correct your view of it, he did not state that they did it because so and so, but he said that they did obtain those results. That is a conclusion.

The Master: We will dispose of that very quickly. The reason which animated your purchases in that form was, as I have understood you to say, two-fold, is that correct?

The Witness: Yes.

The Master: Did you accomplish that result?

11346 The Witness: Yes, sir, we did.

Mr. O'Brien: Please note my exception to the last question and answer and to your ruling on my motion to strike out.

The Master: Yes.

By Mr. Ransom:

Q. Was there any other reason you started to state?

A. Simply that the companies at the time the Westchester Company was purchasing were buying under separate contracts. They were purchasing from the same company, and in that case we are bringing the two contracts under one, and not having two.

Q. Did these various companies, aside from the New York Mutual—

Mr. O'Brien: May I call your Honor's attention before we proceed further so that we can clear up some inconsistencies, as I note that you have yourself cleared them up as we go along rather than to wait until the record is out, to correct them all on one day; I wanted to get the same thing out of a witness, the witness who was on the stand yesterday.

Mr. Ransom: I tried to get it direct.

Mr. O'Brien: I wanted to find out whether they 11348
could not have saved a whole lot of money and got a whole lot of advantage by buying all their coal for all the affiliated companies, including the Edison and the United, and your Honor ruled it out.

The Master: Yes, because it was not cross-examination on the witness's testimony as it came along.

Q. Do these companies, other than the New York Mutual make their own individual contracts covering oil or does the Consolidated make one contract which covers the oil requirements of the other companies as well as the Consolidated? 11349

A. There is but one contract which covers all companies with the exception of the New York Mutual.

Q. Is oil for other companies covered in this contract affiliated with the Consolidated delivered to the other companies direct?

A. The oil which goes to the various plants is billed to the company that owns that plant.

Q. And deliveries are made direct to the other companies?

A. Deliveries are made direct to the other companies, yes.

Q. And are deliveries to the other companies under this contract kept track of by the Consolidated?

A. They are.

The Master: In what way?

The Witness: All shipments of oil are certified by a Produce Exchange inspector, and a copy of all that comes to our office and is entered in a book, which keeps track of the amount of oil which is received under the contract which I have made.

The Master: Does that inspector mark down
11351 the plant to which the oil is directed?

The Witness: Yes, sir.

Mr. O'Brien: I move to strike out that question and answer. Manifestly that question was to get in evidence here something that would be objectionable if the question was a flat-footed one.

The Master: What?

Mr. O'Brien: A certificate by the Produce Exchange inspector of oil as purchased.

The Master: You cannot be right about that.

Mr. O'Brien: I am making my motion.

The Master: I asked the question. I had not
11352 the slightest idea how the record came to the Consolidated.

Mr. O'Brien: That was in answer to Judge Ransom's question.

The Master: No, it was in answer to my question.

Mr. O'Brien: Whether you had the purpose or not, of course that does not enter. What I am directing your attention to, is this, that in answer to your question the answer puts into this record something that they could not get in.

The Master: That is possible, but it got in

in direct answer to my question, and it will stay in.

Mr. O'Brien: I have assumed that you have anticipated counsel's question, which would be the same thing.

The Master: It may be. Very frequently a thought occurs to me and I like to get it off my mind.

Mr. O'Brien: The answer which should go out is manifestly that they have stuck in this record something that ought not to be there.

The Master: The answer stays in over your 11354
objection and exception. Go ahead.

Q. In the course of your duties for the Consolidated, Mr. Addicks, do you from time to time keep yourself informed as to the market conditions affecting the supply of gas oil of the kind used by the Consolidated?

A. I do.

The Master: I am going to get into trouble again, Judge Ransom, by asking Mr. Addicks to tell me the difference between gas oil and other oil.

The Witness: The crude oil is distilled and the various products of the oil are taken off at 11355
various temperatures, and gas oil is a product down near the lower end. The gasolene comes off first, the naphthas and so on. This gas oil is a product which is useful in the manufacture of gas, but not particularly useful for any other purpose except fuel.

The Master: What I wanted to ask is whether there is any particular kind of oil you have got to use. I mean from any particular field or of any particular quality.

The Witness: Well, speaking broadly, if I could choose my field—

Mr. O'Brien: I want to note the fact, your Honor, that I object to these questions if they are addressed to the witness on the assumption that he is an expert on oil.

The Master: Yes, I am assuming that.

Mr. O'Brien: I am not assenting to that proposition.

The Master: I will.

Mr. O'Brien: If he is being presented as an expert I want to examine him.

The Master: I will assume that any man who
11357 has been buying oil for 25 years knows enough to tell me the kind of oil that is used in the making of gas.

Mr. O'Brien: He is proceeding to tell you something that calls for more or less technical knowledge.

The Master: I think he has more or less technical knowledge.

Mr. O'Brien: He says that gas oil is used for fuel. It takes an expert to prove that.

The Master: I will assume that Mr. Addicks has more or less knowledge on the subject. Do you require a particular grade of oil, from par-
11358 ticular fields like the Pennsylvania, Oklohoma or Texas field?

The Witness: Speaking broadly, I should think the gas engineer would prefer gas oil from the Pennsylvania field, but today I do not think we are able to discriminate as between any of them. After the Pennsylvania field the Lima Crude field is considered very desirable.

Q. What state is that located in?

A. Ohio. But the oil now is purchased on a gravity basis and it is known generally as gas oil. I am not prepared to say where the gas oil comes from.

The Master: So long as it has a certain specific gravity—

The Witness: So long as it will test within the gravities required by the contract and we get satisfactory results in turning that gas oil into illuminating gas that will carry forward in the business as we burn it.

The Master: Do you require a certain density, too?

The Witness: I have never handled gas oil, that I recall, of less than 28 gravity which is the gravity on a certain scale referred to water. I 11360
should say that I have handled about every gravity from there up to the highest gravity.

Q. And, Mr. Addicks, on what basis is the price of gas oil used by the Consolidated Company computed? Is it a price for oil delivered alongside, in barges, or is it a price at the point of refining, or what?

Mr. Chambers: To that, if your Honor please, I object upon the ground that the contracts which he said have been entered into are the best evidence.

The Master: I think so.

Mr. Ransom: I think he could state a custom or a common method. 11361

The Master: I think the contracts would be the best way of showing that.

Mr. Chambers: How does custom enter into it where they have an actual contract? Custom is proven when they have no writing.

The Master: Is there any reason why Mr. Addicks cannot give us the contracts?

Mr. Ransom: No, I was about to ask him that.

The Master: Let us have it, then.

Q. Has the Consolidated Gas Company made contracts with any oil company or companies for the

supply of gas oil used by it covering the period from January 1, 1913, let us say, to date?

A. They have.

Q. Have you in court here such contracts as the company had during that period?

A. I have.

Q. And will you produce them?

Mr. O'Brien: Why have you not produced the ones prior to that time, Judge Ransom?

The Master: I do not think you will get anywhere by asking those questions.

11363 Mr. O'Brien: Well, it is only a notice to produce, your Honor—my query.

The Master: Then give your notice to produce. Do you now require counsel to produce the contracts prior to January, 1913?

Mr. Chambers: Yes.

Mr. O'Brien: It is putting in the operating expenses and revenues of this company since 1906, as hinted by him, yes.

The Master: I will direct, if counsel for the complainant relies on operating results prior to January, 1913, that he produce the contracts prior to that year.

11364 Q. Have you the contracts prior to 1913?

A. I have the contracts for 1904 and also for 1905 to 1908, and the contract of January 1, 1911, which carried it through to 1911, 1912 and 1913. I have everything here except from 1908 to 1911.

Q. That is, the contract for 1913 was a contract which became effective in 1911?

A. Running for a period of something, I think, like—270,000 gallons, covering a certain period which ended on the 31st of December, 1913.

Q. From the first of January, 1911?

Mr. O'Brien: Did you say 270,000 gallons a day?

The Witness: I think it is 275. Did I say thousand?

Mr. O'Brien: Yes.

The Witness: I would like to correct that. It is 270,000,000 gallons.

Q. That is not in a day?

A. That is a period of a year and a few months.

The Master: That is within the period covered by the contract?

The Witness: Yes, sir, within that period.

Q. During the middle or latter part of the year 1916, did you take up the question of making a con- 11366
tract for the supply of gas oil for the ensuing year, 1917?

A. I did.

Q. What were the circumstances which led you at that time to take up the question?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

Mr. Ransom: It is a question of diligence.

Mr. Chambers: The same objection. Why are we interested in these preliminaries? Everything that has gone before is now embodied in the record.

Mr. Ransom: Not at all. 11367

The Master: Perhaps I am interested in it. I will allow the question.

Mr. O'Brien: Exception.

The Master: Can you tell the circumstances at that time, Mr. Addicks, that would call for your taking up the question of a contract for the following year?

The Witness: We were faced with a material advance in the price of oil, and I took the matter up on July 27, 1916.

Mr. O'Brien: You are reading from what book now, Mr. Addicks?

The Master: Do not answer Mr. O'Brien for a minute because I have a question I want to ask. I think Judge Ransom's question only contemplated what the circumstances were which called for your taking up the question at that time. I think you have answered that by saying a certain increase in price.

Q. What did you do under those circumstances?

The Master: Just one moment. Is that correct, Mr. Addicks?

The Witness: That is my best memory of it.

11369 The Master: What is your next question?

Q. What did you do, or what did you proceed to do with respect to a contract for 1917, for deliveries of oil?

Mr. Chambers: I make the same objection, and I do it so as not to lumber up the record, but to expedite the trial, as not necessary to go into those matters.

The Master: Objection overruled, and exception. Let us hear what Mr. Addicks did in reference to it.

A. I took the matter up with Mr. T. J. Williams
11370 of the Standard Oil Company of New Jersey, with respect to a contract to be enforced after the expiration of the existing contract of December 31, 1916.

Mr. O'Brien: I am going to object to the witness reading his statement from a book.

The Master: In the first place Mr. Addicks is not reading from a book; he is reading from a bound file of correspondence, from which he is refreshing his recollection.

Mr. O'Brien: I do not know that. I only saw the cover. If it is correspondence we want to know it.

Q. Mr. Addicks, have you a memorandum of what you did, which you made at the time?

A. Yes, sir.

Mr. O'Brien: I want to ask the witness—

The Master But I will not let you ask any question now. I am going to let Judge Ransom finish his questions.

Q. In what form was this memorandum made at the time?

A. A letter written to the president of the Consolidated Gas Company, setting forth all the conditions surrounding the supply of oil for the year 1917. 11372

Q. On what date?

A. The date is October 2, 1916.

Q. And written on that date?

A. Written on that date.

Q. In the course of your duties?

A. In the course of my duties; yes, sir.

By the Master:

Q. That is the paper that you have before you now?

A. That is the paper I am now referring to.

Q. And that refreshes your recollection?

A. Yes, sir.

Q. And you now testify from knowledge after having your recollection refreshed? 11373

A. Yes, sir.

The Master: Do you want to say anything, Mr. O'Brien?

Mr. O'Brien: The record takes on a little different aspect after your Honor's questions.

The Master: Frequently it does, if you will only be patient a few minutes.

Mr. O'Brien: But I want to say this, that we might as well turn the things in here, these books. The last witness gave us nothing except what was prepared in that office.

The Master: You might as well make up your mind that when a witness is on the stand to testify to a fact, I am going to get that fact.

Mr. O'Brien: Let us take the cover off this right here. The witness proceeds, without even stating that his memory is dusty, that he cannot recall these things on vital matters—the thing that he is supposed to be an expert in and that nobody else can take care of. He did not state that as a preliminary to his reading something prepared by him or somebody else.

11375 The Master: He is not reading anything at all. He simply gave the date that he wrote the letter, that is all.

Mr. O'Brien: I thought from the way his eyes roved and his lips moved he was reading from something, but my objection stands with all its validity, if it had any.

By Mr. Ransom:

Q. What did you do?

The Master: He wrote a letter to Mr. Williams.

Mr. O'Brien: I enter my objection to the reading of a memorandum that the witness said

11376 he wrote.

The Master: He is not reading it.

Mr. O'Brien: That does not make facts, because he wrote it to somebody else in the Consolidated Gas Company.

The Master: You are thinking ahead of the question, that is the trouble with your objection. The witness has simply stated that he wrote a letter.

The Witness: No, I took the matter up personally.

The Master: He took the matter up with Mr. Williams.

Q. Proceed with your statement of what you did.

The Master: What happened after that?

A. On the next day, July 28th, I wrote three letters, one to the Texas Company, 17 Battery Place, New York City, one to the Sun Company, 30 Church Street, and one to the Tidewater Oil Company, at 11 Broadway.

Q. Was that a form of invitation for bids?

A. Yes, sir.

The Master: Let me interrupt you. Did I understand, Mr. Addicks, that you wrote a letter to Mr. Williams? 11378

The Witness: I do not think I wrote a letter. I think I called on Mr. Williams on the 27th.

The Master: I thought you said you wrote a letter?

Mr. O'Brien: Why did you not write a letter to Mr. Williams when you wrote one to the other companies?

The Master: I will not permit that. I will let you cross-examine when your time arrives, Mr. O'Brien. You ought to know by this time I will not let you do that.

Mr. O'Brien: He is getting away from what he submitted to the president of the company. 11379 I understood Judge Ransom asked him a question not yet answered.

The Master: No, he has answered.

Mr. O'Brien: As to what he wrote to the company, to his own company.

The Master: There is no such question.

Mr. Ransom: I have not asked him that.

The Master: You wrote three letters—to the Sun Company, the Texas Company and some other company.

Q. That was a form letter?

The Master: No, I will not let you ask what the letter said at this time. He wrote three letters.

Q. Can you produce the original or carbon of letters which you sent?

A. Yes.

Q. Will you do so?

A. (The witness produces papers.)

Q. These three letters being indentical in form?

A. Yes, sir; as I recall it they are identical.

11381 Q. And were sent by you to these companies in the regular course of your duties?

A. Yes, sir.

Mr. Ransom: I offer in evidence these carbon copies of letters.

Mr. Chambers: To that letter I object upon the ground that it is immaterial, irrelevant and incompetent. It is just an inquiry to the Texas Company concerning oil and guarantees, and it seems to me it is wasting the time of the Court upon a subject that has no bearing upon the issues in this case. If counsel would like to save time, here is an opportunity to do so.

11382 Mr. O'Brien: Why, your Honor, these letters I object to on the ground that the letters bear on their face their own condemnation.

The Master: Is that your only objection?

Mr. O'Brien: No, I have got several objections, your Honor.

The Master: Let me see them. (Takes letters.)

Mr. Ransom: I shall follow this with proof of such replies as we received.

Mr. O'Brien: What about that which went before?

The Master: I prefer holding these letters until the replies come in.

Mr. Ransom: May I have these marked for identification.

The Master: It will not be necessary at this time. We can identify them by reference to their dates, July 28th, 1916, the letters to the Texas Company, the Sun Company and the Tidewater Oil Company.

Mr. Chambers: May I just ask, did he say he had a contract for 1917 drawn?

Mr. O'Brien: I would like to see those letters 11384
sometime.

The Master: You may.

Mr. Chambers: Did he say the company had a contract for 1917 drawn?

The Master: I do not think the direct examination is finished yet.

Mr. O'Brien: Your Honor desires that I reserve my objections until such time as they are again offered?

The Master: They are withdrawn for the time being.

Q. These companies, the Texas Company, the Sun Company and the Tidewater Oil Company were the 11385
three companies to whom this formal letter was sent?

A. Yes.

Q. Why did you send such a letter to these companies and not to other companies.

Mr. O'Brien: I object to it upon the ground that the letters have been withdrawn, they are not in evidence. They are not now offered in evidence and therefore the question is certainly premature, if at any time it becomes material, relevant or competent. I object on the further

ground, your Honor, that the letters offered for your perusal refer to previous communications that are not produced here.

The Master: I am going to dispose of it in an entirely different way. I think that Judge Ransom is approaching the matter from probably a wrong angle, if I sense it right. A contract was probably made for that year, was it not—for 1917—with somebody or was there no contract.

Mr. Ransom: Yes, but not with one of these
11387 companies.

The Master: I know that. I think you will save time, Judge Ransom, if you will simply offer in the proof as to just what was done, as to whom you bought oil from, and the price. Unless I am very much mistaken there will be some question on cross-examination that is going to open the door for this whole explanation, and I do not think you ought to anticipate that situation in this way, strictly speaking.

Mr. O'Brien: It is like Shakespeare, "Methinks the lady doth protest too much."

Mr. Ransom: The showing of the reason-
11388 ableness of the prices, the showing of the manner in which our purchases were made, the showing of efforts to obtain oil from different sellers, the fact that other persons of whom we sought bids for oil quoted prices much higher—all of these things—

The Master: I would rather have you do it this way, then, I would rather have you offer in evidence the contract for 1917. I will then permit you to ask the witness whether that was the best price he could get at the best terms he

could get and what effort he made to get anything better.

Mr. Ransom: I will accept your Honor's suggestion.

Mr. O'Brien: That will be better than this correspondence school method of proving a case.

The Master: I am glad that you agree that I do something better.

Mr. Chambers: He should not prove his alibi first.

Q. Did the Consolidated Company enter into a contract with the Standard Oil Company of New 11390
Jersey for the supply of gas oil for the calendar year 1917?

A. They did.

Q. As of what date?

A. November 13, 1916.

Q. What was the stipulated amount of oil?

Mr. Chambers: That is all in the contract.

The Master: The contract speaks for itself.

Mr. Ransom: I offer the contract in evidence.

Mr. O'Brien: I would like to ask the witness a question or two before making my objection.

The Master: I will let you ask the questions to see what is in your mind. 11391

By Mr. O'Brien:

Q. Mr. Addicks, this contract was entered into with the approval and after discussion of the executive committee?

A. It was approved after—a contract is never signed until it is approved by the executive committee.

Q. And all of the executive committee approved of it, did they?

A. I don't know who was present at the time, but whoever was present undoubtedly approved it.

Q. Can you state who were the executive committee at that time

A. No, I can't remember that.

Q. You don't know who your executive committee was two years ago?

A. I thought you wanted to know who was present at the meeting.

Q. Yes?

A. I cannot state who was present at the meeting. That contract is 1917, is it?

Mr. Ransom: Made at the end of 1916.

11393 Q. 13th of November, 1916?

A. I think the executive committee is the same as now existing.

The Master: What is that?

The Witness: Mr. Garver, Mr. Brady—

Q. Mr. Nicholas E. Brady, you mean?

A. Nicholas F. Brady. Mr. Rockefeller—

Q. That is William or William G.?

A. William. Mr. F. A. Vanderlip and Mr. Cortelyou.

Q. Mr. Rockefeller has extensive holdings in the company with which this contract was made?

Mr. Ransom: I object to that as incompetent,
11394 irrelevant and immaterial and not within the issues here.

The Master: Objection sustained. That will come out on cross-examination afterwards. I am permitting you to ask any question relating to the competency or genuineness of this document, that is all and nothing else.

Mr. O'Brien: Exception. The question is designed to bring out several things, one of which is whether this is the real contract or not.

The Master: That you can ask him.

Q. As I understood it, Mr. Addicks, you conferred with Mr. T. J. Williams?

Mr. Ransom: I object to the question. It does not relate to the competency of the document.

The Master: I will sustain that objection. I do not think I will allow any further questions preliminary to your objection. State your objection.

Mr. O'Brien: I note an exception.

Q. May I ask who Mr. T. J. Williams is?

Mr. Ransom: I object to that.

The Master: I will sustain that objection, because it has already been answered, if for no 11396
other reason. He said he conferred with T. J. Williams, president of the Standard Oil Company of New Jersey.

The Master: Who is he?

The Witness: He is an officer of the Standard Oil Company of New Jersey.

The Master: What official is he?

The Witness: I think he signed his letter simply T. J. Williams.

Q. Is he like Mr. Higgins, the contract man of the Standard Oil Company of New York?

Mr. Ransom: I object to that.

The Master: Objection sustained. 11397

Q. Is Mr. Williams the man who has exclusive charge of similar work in the Standard Oil Company of New Jersey?

The Master: Objection sustained. Is there any objection to that paper?

Mr. O'Brien: I object to it on the ground that it does not appear from the testimony preliminary to the offer of this paper that this is the only contract or the real contract made with the Standard Oil Company of New Jersey for the purchase of oil in the period mentioned.

On the further ground that it does not appear

from the testimony preliminary to and necessary for the admission of this paper that the executive committee which governs the Consolidated Gas Company are not substantially owners of the Standard Oil Company of New Jersey.

The Master: Anything else, Mr. O'Brien?

Mr. O'Brien: That will serve for the time being, I guess. We will have a few more after we get more information.

The Master: Objection overruled, and exception. It will be marked in evidence.

11399 Paper received in evidence and marked Complainant's Exhibit 290.

Mr. O'Brien: May I have it interpolated in my question whether this is the only contract, and whether that embraces all the agreements made with respect to that one hundred and twelve millions?

The Witness: Yes.

Q. There were no other conditions of the contract that were covered by any other written paper or oral understanding?

A. None.

The Master: That was for the calendar year

11400 1917, was it?

The Witness: Yes.

By Mr. Ransom:

Q. What was the stipulated grade of oil or kind of oil?

A. Not less than twenty-eight gravity, I think.

Q. What is the total quantity?

Mr. Chambers: The contract speaks for itself.

Mr. Ransom: I want these things on the record.

The Master: I cannot do any harm, the con-

tract is in evidence. It may be useful to have it spread out here.

Q. What is the total quantity?

A. 112,000,000 as I recall it.

Q. What was the rate per gallon stipulated as to the Consolidated Gas Company and its plant?

The Master (reading from exhibit): Three plants of the Consolidated Gas Company, 21st Street, 42nd Street and 99th Street, at five cents.

By Mr. Ransom:

Q. In these prices there was included water transportation? 11402

The Master: What prices?

Q. The prices which you have just given.

A. Those prices were prices delivered at the plant, including the cost of transportation to that plant.

Q. And the 1917 contract was not made on a basis of readjustment of price, if there was a readjustment in lighting charges?

Mr. Chambers: I object to that.

The Master: You are talking about this 1917 contract?

Mr. Ransom: Yes.

The Master: It speaks for itself. I will sustain the objection. 11403

Mr. Chambers: That is amplifying.

Q. Are the prices set forth in this contract obtained in November, 1916, covering the year 1917, the best price you could obtain for oil under the conditions as they existed?

Mr. Chambers: I object to that.

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

Mr. Ransom: I ask that question under the Master's ruling and direction.

Mr. O'Brien: That does not give you any propriety necessarily.

The Master: State your objection.

Mr. O'Brien: The objection, of course, is that it calls for a conclusion of the witness, and that is one of the findings that you are going to make in this case, whether they acted wisely, or whether they acted discreetly, or improvidentially in the purchase of oil.

The Master: I will let the witness say whether it was the best price he could get.

Mr. O'Brien: That is part of our testimony and our cross-examination.

11405 The Master: I am going to let him state as a direct statement, that that was the best price he could get and let you cross-examine on that. The difficulty with many of these objections calling for a conclusion, is that the answer does not call for a conclusion. It calls for a statement of facts. The witness says, "I could not get it any cheaper."

Mr. O'Brien: He does not say that.

The Master: That means no more than if I should say that I paid five cents for this apple, which is the best I could get for that price, and the cheapest apple I could buy, and on cross-examination you could ask me what efforts I made to get

11406 a better or cheaper one.

Mr. O'Brien: If he said there were three or four bids, and he took the lowest, we will know the lowest one as a fact, but the word "best" means a great many things besides that it may mean the lowest price.

The Master: The question is allowed.

Mr. O'Brien: I take an exception.

The Master: Is that the best price you could get?

The Witness: Yes.

The Master: What effort did you make to get a lower price?

The Witness: I sent letters, I have already testified to, to three different companies.

The Master: Did you get any bids from them?

The Witness: I received no reply for any but the Sun Company.

The Master: Did you get any reply from the Sun Company?

The Witness: I did.

The Master: Go ahead.

Q. Is this the reply which you received from the Sun Company to your letter of July 28th (handing paper to witness)? 11408

A. Yes, sir.

The Master: Two companies did not answer and the Sun Company did?

The Witness: Yes.

Mr. Ransom: I offer in evidence the letter from the Sun Company, of August 1, 1916.

The Master: Does that letter refer to another letter?

Mr. Ransom: I offer in evidence the letter of July 28th to which it refers.

The Master: Offer both of them. Offer the copy of the letter to the Sun Company of July 28th, and the Sun Company's reply thereto. 11409

Mr. Ransom: I offer in evidence the letter from the Sun Company by Harry C. Carr, District Sales Manager, dated August 1, 1916, addressed to Mr. Addicks, and I offer in evidence also a copy of the letter from Mr. Addicks to the Sun Company, dated July 28th, 1916, referred to in the letter of August 1, 1916.

The Master: Show that to the other side, and I will hear objections.

Mr. Ransom: I offer another letter from the Sun Company.

The Master: Two letters from the Sun Company? Offer this one letter first.

Mr. Ransom: Yes, I will offer that first.

The Master: And the letter to which it refers.

Mr. Ransom: If you wish to look at the rest of the files, Mr. O'Brien, I will offer them all in evidence.

The Master: I was just going to state, Mr. O'Brien, I do not think you ought to look at other letters in there.

Mr. O'Brien: I am merely looking at the
11411 carbon. I have not read the carbon copy yet.

The Master: Judge Ransom will hand it to you.

Mr. O'Brien: The papers refer to carbons, and the offer was made as to the carbon, and I turned the papers to read the carbon.

The Master: Finish your objection.

Mr. O'Brien: I come now to the objection I formerly made, your Honor, that the letter was not written by Mr. Addicks, but written in Mr. Addicks' name, by some F. S., Jr., whoever he may be, and it condemns itself. It is a letter that suggests the reply, and it is objectionable first,
11412 because it appears to have been sent by somebody other than Mr. Addicks, secondly, because it is not the original, and Mr. F. S., Jr., has not identified this as a true carbon copy. Third, because it refers to prior communications which may be a vital part of the transaction involved in these letters. Fourth, because it does not appear that an effort was made to do business with an oil company that might sell oil. There are a number of oil companies, as Mr. Addicks knows, in New York City, doing business here that might make

contracts and could have been approached. On the further ground—

The Master: Give me the grounds.

Mr. O'Brien: On the further ground that it does not appear that the witness took up with the representatives of these companies personally the negotiating of a contract, as he did with the representative of the Standard Oil Company of New Jersey.

The Master: I have not seen the letter from the Sun Company, Mr. Ransom. Let me see it.

Mr. O'Brien: The general objection is that 11414
these letters are incompetent, irrelevant and immaterial, and the objection goes to the carbon copies of letters purporting to be signed by W. R. Addicks, by F. S., Jr. As to the letter from some sales agent or sales manager of the Sun Company, I object to that because the witness is not produced here to testify and to be cross-examined as to what he has to say in that letter. I object to all of them, because they are months anterior to and prior to the contract which was made in November of 1916.

Q. Who was F. S., Jr.?

A. My chief clerk of secretary. 11415

Q. He sometimes signs your names to letters which you have prepared?

A. If I have not personally signed them.

The Master: Anything further, Mr. Chambers?

Mr. Chambers: Nothing further.

The Master: Objection overruled. I shall receive in evidence the letter from the Sun Company to Mr. Addicks, dated August 1, 1916, as Exhibit 291, and the carbon copy of letter of July 28th, from the Consolidated Gas Company to the Sun

Company, as Exhibit 292, and they will be marked accordingly.

Letters received in evidence, marked Complainant's Exhibits 291 and 292.

The Master: Did you say, Mr. Addicks, that there was a subsequent letter from the Sun Company in reply to a subsequent letter from you?

The Witness: No, I did not, except the second letter.

Q. Subsequent to this letter of August 1st, did you receive a further letter from the Sun Company,
11417 through its district sales manager, referring to the same subject matter, and is that the letter (handing paper to witness)?

A. I did. This is the letter.

Mr. Ransom: I offer it in evidence.

The Master: Have you seen this other letter, Mr. O'Brien?

Mr. O'Brien: No.

The Master: Look at it.

Mr. O'Brien: Mr. Addicks, who is the Sun Company; do you know the president of it; do you know who he is?

The Master: I will not permit that question
11418 at this time. I know that is one of the questions you are going to ask on cross-examination.

Mr. O'Brien: Wouldn't it be a proper thing to have Judge Ransom tell us who the Sun Company is?

The Master: No, you are going to ask the witness before he leaves the stand. I have no doubt.

Mr. O'Brien: I am looking for the letters to Mr. T. J. Williams. You do not produce that in the correspondence.

The Master: You probably will have some

questions about that before you get through, won't you?

Mr. O'Brien: If counsel wants to leave gaps in the case, it is his case.

Mr. Ransom: So far.

Mr. O'Brien: I wouldn't want to be the clients, though.

Mr. Ransom: You never will be.

The Master: State your objections as to that letter, Mr. O'Brien. You notice, I assume you always object, so that is why I ask you to state your objection. 11420

Mr. O'Brien: It is very inadmissible, your Honor, and it seems almost futile to object to it.

The Master: I will assume you are objecting on the same grounds, and I will overrule your objection.

Mr. O'Brien: Yes, on the same ground. And further, in the first place, the correspondence referred to in Mr. Addicks' letters that brought forth two letters from the Sun Company are not here, and we don't know what Mr. Addicks may have told them. He may have written one thing and told another.

The Master: That may be. That is quite in 11421
line with your suspicious mind about everything connected with the Gas Company, and the Standard Oil Company and it does not surprise me and you are justified. I mean this seriously that you are justified.

Mr. O'Brien: There are other oil companies.

The Master: Surely.

Mr. O'Brien: There are other oil companies. Mr. Addicks can tell us the story if he tells us all he knows.

The Master: Surely, he probably will.

Mr. O'Brien: And that is the reason why Brother O'Brien is suspicious.

The Master: I say it is your business to be suspicious, but many times I think your suspicion leads you astray about the way to handle this case.

Mr. O'Brien: I am thinking of the Gulf Refining Company and I am thinking of the Standard Oil Company of New York.

Letter received in evidence and marked Complainant's Exhibit 293.

11423 The Master: There undoubtedly are other companies. But whether they could supply the requirements and quantities and at the times is another matter.

Mr. O'Brien: The point I have in my mind is this, that you cannot prove anything by correspondence. It is like looking at two fellows going through the deaf and dumb language.

The Master: We can be perfectly free in our discussion in a matter of this kind. The minute we find that the Consolidated Gas Company buys all its requirements from the Standard Oil Company, and that there are directors common to both companies, you are justified in analyzing and closely looking into the contract relations between those companies. But do not let us waste any time about it. The mere fact that there is some correspondence does not mean anything very much. I am leaving it in because it is part of the record.

11424

Mr. O'Brien: Let me just say this, on the record or off the record, just a little bit of the history of this matter so that you will understand some of my objections. I am not testifying. This is not for the record, but it appears—

Mr. Ransom: I object to that.

The Master: Do not let us take up time on that, Mr. O'Brien. Let us go ahead with this.

Mr. O'Brien: What I want to say to your Honor is that there are different companies, and that is a matter of public record.

The Master: You will bring that out on cross-examination.

Mr. O'Brien: If somebody can buy oil for three cents, there is no reason why the Consolidated Gas Company cannot, and there is no rea-

the Consolidated Company with its re- 11426
quirements of one hundred and twelve millions could not have their own oil plants.

The Master: You may bring that out on cross-examination.

By Mr. Ransom:

Q. Was there any reason why you did not send a letter on July 28th to the Standard Oil Company of New York?

A. Yes.

Q. Why?

A. Because their quotations were familiar to me through the Mutual Company.

Q. The Mutual at that time was buying from the 11427
Standard Oil Company of New York?

A. Yes.

Q. And you were familiar with the quotations of the Standard Oil Company of New York at that time?

A. From time to time, yes, sir.

The Master: Were you familiar with the Texas Oil?

The Witness: Texas Oil is one of those that I addressed a letter to.

The Master: The Texas Oil, that is the Tidewater?

The Witness: No, the Texas Oil is not.

The Master: The Sun, the Texas Oil and the Tidewater?

The Witness: Yes.

Mr. O'Brien: On the question of the admissibility of this witness, we have only got one-half or one-quarter. Here is a big, big question in all our minds, as to the method of writing a letter to a company and asking if they will furnish some oil, and then stopping there.

The Master: This is the way my mind operates on this branch of the case: Mr. Addicks has testified that he made a contract with the Standard Oil Company of New York at the prices fixed in this contract. That is the substance of all of his testimony. What develops later on, we will have to handle when we get to it.

11429

Q. Mr. Addicks, before this contract marked Complainant's Exhibit 290 expired, did you take up the matter of making a contract covering the 1918 supply of oil?

A. I did.

Q. Was there a contract finally negotiated by you and entered into by the complainant company?

11430

A. Yes, sir.

Q. With whom?

A. The Standard Oil Company of New Jersey.

Q. When? Have you the contract here?

A. Yes, I will refer to the contract by exact date, if I may. It is dated the 4th day of December, 1917.

Q. Covering what period?

A. Beginning January 1, 1918, and ending December 31, 1918.

Q. And this is the contract produced by you from your files?

A. From the files of the secretary of the company, yes, sent by me to him.

The Master: To save time, Mr. Addicks, there is not any other contract?

The Witness: There is not.

The Master: For that year?

The Witness: There is not.

The Master: There was not any other secret agreement?

The Witness: None.

The Master: There was not any rebate, any price secretly made or otherwise?

The Witness: There was not.

The Master: This contract is the one contract 11432
between these two companies carried out in accordance with the terms expressed in that contract?

The Witness: Yes, sir.

The Master: Show it to the other side.

Mr. Ransom: I offer it in evidence.

The Master: Have you an objection, Mr. Chambers?

Mr. Chambers: None.

The Master: Mr. O'Brien, what is your objection?

By Mr. O'Brien:

Q. Mr. Addicks, I assume this was approved— the 11433
entering into this contract was approved by the executive committee before the contract was made?

A. Yes.

Q. And the executive committee were the same men that you have previously referred to?

A. Yes.

Q. And you had their authority and direction to go ahead and close the contract?

A. I had the authority, yes, sir.

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial, on the ground that it

does not appear that this was the only company that they could have done business with and bought oil from and on the ground that they have signed an agreement with clauses in it by which it could be abrogated at the will of the party of the first part, the Standard Oil Company of New Jersey.

The Master: Objection overruled.

Mr. O'Brien: On the further ground that it has not appeared in this case as yet that it is necessary for them to buy gas oil of this kind to

11435 make gas.

The Master: That objection is overruled.

Mr. O'Brien: They could have bought crude oil and made their gas out of crude oil for aught that appears in this case.

The Master: The objection is overruled. Exception.

Marked Complainant's Exhibit No. 294.

By Mr. Ransom:

Q. Mr. Addicks, this contract for the 1918 oil covered what quantity?

The Master: It speaks for itself.

Mr. Ransom: Well, I would like to have that

11436 on the record.

The Master: No, I am not going to have it. I am not going to have spread on the record what it says, because it is in the record now.

Mr. Ransom: I want to ask him another question about the contract.

Mr. Ransom: Do you mean I may not put in the price as to the Consolidated Company?

The Master: The price is net.

Q. Mr. Addicks, I note that this contract, Exhibit 294, provides that "The prices above mentioned are based on the lighterage rate given below plus government tax of three per cent on transportation, and it

is mutually agreed that if the lighterage rate or war tax is increased or decreased the price will be correspondingly adjusted." During 1918 was there any decrease in the lighterage rates or in the government tax?

A. No.

Q. Was there any increase or increases in the lighterage rate and so in the amount of the government war tax?

A. There was one increase during that year, if my memory serves me correctly.

The Master: In the lighterage? 11438

The Witness: The lighterage.

Q. And that had a consequent effect on the government tax figured at three per cent?

The Master: No.

Mr. Ransom: I mean on the rate.

The Master: On the transportation, the water rate.

Mr. Ransom: Yes. It increases the cost.

The Master: Yes, it increases the cost.

Mr. Ransom: Because the three per cent is figured on a higher water transportation rate.

The Master: That is correct.

Q. And in the 1918 contract there was a difference in the charge for oil delivered at 21st Street from that delivered at 99th Street? 11439

A. That is provided for in the contract, yes.

Q. Based on the difference in lighterage rate?

A. Yes, sir.

Q. Was this price set forth in the contract, Exhibit 294, of six and a half cents per gallon plus transportation, depending upon the location of the plant—was that the best price which you could obtain at the time this contract was made and under the conditions

11440 Walter R. Addicks, Direct.

obtaining with reference to obtaining a supply for 1918?

Mr. Chambers: I object to that.

Mr. O'Brien: Your Honor, I object to that as calling for a conclusion.

The Master: It is the same objection to the same question that was asked as to the 1917 contract. The objection is overruled. I will take the witness's statement as to whether it was or was not the best price he could obtain.

Mr. Ransom: Just answer. Was it or was
11441 it not?

A. It was the best price.

Mr. O'Brien: Your Honor, right here I might call to your attention the fact that when the witness was being examined preliminarily he was asked "You kept yourself posted on market prices"? This asking him the best price is being done without any question or inquiry as to what were the market prices.

Mr. Ransom: That is the same objection.

Mr. O'Brien: He undertook to describe to us all about crude oil and the price of crude oil. There is a whole lot of testimony uncovered, yet
11442 he is asked to characterize his own bargain. That is a matter solely for the Court.

The Master: Yes, I am allowing him to do it.

Mr. O'Brien: Exception.

Q. Mr. Addicks, when you took up the negotiating of a contract for the 1918 supply did you communicate with any oil companies as to supply prices and the like?

A. Yes.

Q. With what companies did you communicate?

A. The Gulf Refining Company.

Q. This was in writing?

A. This was in writing.

Q. What other companies??

A. The Sun Company, the Texas Company, and the Tidewater Oil Company.

Q. Did you send letters to each of those companies?

A. I did.

Q. And have you here carbon copies of the letters so sent by you?

A. I have.

Q. What is their date?

A. November 28, 1917.

Q. And letters in that form were signed and sent by you? 11444

A. They were.

Q. Did you get replies from any of these companies?

A. I did.

Mr. O'Brien: The 28th, Mr. Addicks?

The Witness: Yes, November 28th.

Q. From what companies did you get replies?

A. I got a reply from the Gulf Refining Company, from the Sun Company, from the Texas Company and from the Tidewater Company.

Q. And you have those replies here as received by you?

A. I have.

Mr. Ransom: I offer in evidence the letter of the Gulf Refining Company, 21 State Street, New York, under date of November 28th, 1917, replying to the Consolidated Gas Company's letter of November 28th. 11445

Mr. O'Brien: They wrote the same day. That is quick work.

Mr. Ransom: I also offer in evidence the copy of Mr. Addick's letter dated November 28th, 1917, to the Gulf Refining Company at its office, 21 State Street, New York.

The Master: Offer them all and we will pass on them.

Mr. Ransom: I offer in evidence the letter from the Sun Company, dated November 30th, 1917, replying to a letter of November 28th, 1917.

The Master: Is that Baltimore?

Mr. Ransom: That is the Sun Company of 30 Church Street, New York City.

Mr. Ransom: I offer in evidence the copy of the letter sent to the Sun Company by Mr.
11447 Addicks under date of November 28th, 1917. I offer in evidence the letter of the Texas Company, its New York office, by its Sales Manager, dated December 1st, 1917, addressed to Mr. Addicks, referring to his letter of November 28th. I offer in evidence the copy of the letter sent to the Texas Company, dated November 28th, 1917, by Mr. Addicks. I offer in evidence the letter of the Tidewater Oil Company, written from its office, 11 Broadway, New York, under date of December 31st, 1917, addressed to the Consolidated Gas Company of New York, replying to the letter of November 28th.

11448 Mr. O'Brien: Did you say the 31st?

Mr. Ransom: December 1st. I offer in evidence a copy of the letter of November 28th, 1917, sent by Mr. Addicks to the Tidewater Company at its New York office.

Mr. O'Brien: Your Honor, before I make my objection, may I read you this letter?

The Master: No.

Mr. O'Brien: Think of the Consolidated Gas Company sending that little love message.

The Master: What is your objection to these letters?

Mr. O'Brien: I object to them, your Honor, because they manifestly are not a bona-fide transaction. They speak for themselves, and they do not embrace diligent and decent effort to negotiate a contract with anybody. They are incompetent, irrelevant and immaterial, and they condemn themselves on their face.

The Master: Objection overruled, exception.

Letter of the Gulf Refining Company, dated November 28th, 1917, to the Consolidated Gas Company of New York, received in evidence, marked Complainant's Exhibit 295. 11450

Letter of the Consolidated Gas Company, by W. R. Addicks, vice-president, to the Gulf Refining Company, dated November 28, 1917, received in evidence and marked Complainant's Exhibit 296.

Mr. O'Brien: I would suggest that they be read into the record. They are briefer than the statement now being made.

The Master: I prefer to have them marked as well.

Letter of the Sun Company to the Consolidated Gas Company of New York, dated November 30, 1917, received in evidence and marked 11451
Complainant's Exhibit 297.

Letter of the Consolidated Gas Company by W. R. Addicks, vice-president, dated November 28, 1917, to the Sun Company, received in evidence and markel Complainant's Exhibit 298.

Letter of the Texas Company, dated December 31, 1917, to W. R. Addicks, vice-president of the Consolidated Gas Company of New York, rereceived in evidence and marked Complainant's Exhibit 299.

Letter of the Consolidated Gas Company, dated November 28, 1917, to the Texas Company, received in evidence and marked Complainant's Exhibit 300.

Letter of the Tidewater Oil Company, dated December 1, 1917, to the Consolidated Gas Company of New York, received in evidence and marked Complainant's Exhibit 301.

Letter of the Consolidated Gas Company, dated November 28, 1917, to the Tidewater Oil Company, received in evidence and marked Complainant's Exhibit 302.

11453

By Mr. Ransom:

Q. Mr. Addicks, can you describe what negotiations you had leading up to the making of the contract for 1918 oil, which is already in evidence, so far as anything further is concerned, aside from these letters?

A. I had an interview—

By Mr. O'Brien:

Q. You are reading now from a memorandum, Mr. Addicks?

A. I am refreshing my mind from a memorandum.

Q. You don't remember it without the memo.?

A. I remember the facts, but I do not remember the

11454 date. On the 4th day of December, I endeavored to have a concession on freight connected with this contract, and I also endeavored to have a provision put in that if the government set a price for oil that we should have the benefit of that price. Neither of those were acceded to. The matter of price was taken up with the Board of Directors of the company, and I was notified.

By Mr. Ransom:

Q. Which company?

A. The Board of Directors of the Standard Oil Company of New Jersey.

Q. What did you try to do with respect to price?

A. I endeavored to get a concession with respect to the price which was quoted in the contract of all freight, making the flat price at the works, less transportation. In other words, I tried to get that much concession in the price.

Q. In 1917, had you been able to get such a concession as to the plants of the Consolidated Company?

A. I did.

Q. Were you able to get it in 1918?

A. I was not; they refused in 1918.

Q. So that in the price for 1918 there was, in spite 11456
of your efforts, included water transportation?

A. Yes, the fractions above the price that was stated.

By Mr. O'Brien:

Q. That is usually about one-quarter of a cent, I suppose?

A. No—

Q. That is what the Texas people told me.

The Master: We are not interested in what the Texas people told you.

Q. It is something that is generally understood, it is a standard, isn't it, Mr. Addicks?

A. No.

By Mr. Ransom: 11457

Q. I will ask you on that. Can you give the variations in this lighterage and wharf tax factor for the different years?

A. I can give the lighterage figure. In 1918 the lighterage rates varied from 2 1/2 cents to 3 1/2 cents.

Q. Is that per gallon or per barrel?

A. Per barrel—at the works from 21st Street to 138th Street, and including Astoria. That was, however, subject to ice conditions.

Q. In terms of cents per gallon can you give the

variations in lighterage on war tax for the different years?

A. Taking those same companies—

Q. We are interested in the Consolidated?

A. Oh, the Consolidated only. .6515 for 21st Street.

Q. That is the total price?

A. Yes.

Q. What was the factor of transportation only?

A. .0515 cents per gallon at 21st Street.

By Mr. O'Brien:

Q. How do you get that if there are sixty-two
11459 gallons in a barrel?

The Master: How would you get it if there were one hundred gallons in a barrel?

Mr. O'Brien: Let us figure it out. He said 2 1/2 cents a barrel. Now, divide that by 50.

The Master: I don't know anything about that, you will have to find that out on cross-examination.

By Mr. Ransom:

Q. You gave a figure for 21st Street. Now, what is the figure for 42nd Street?

A. .0618.

Q. What about 99th Street?

11460 A. .06721.

Q. In 1917 now?

A. In 1917 it was a flat five-cent price.

Q. Before the end of the calendar year 1918, did you take steps to arrange for a supply of gas oil for 1919?

A. I did.

Q. And was there a contract made with the Standard Oil Company of New Jersey for the supply of gas oil during 1919?

A. Yes, sir.

Q. Have you that contract here, produced from the files of the company?

A. I have.

Q. As negotiated by you?

A. Yes, sir.

Q. This also was approved by the executive committee before it was signed?

A. Yes, sir.

Q. And the personnel of the executive committee had not changed from the preceding year?

A. No, sir.

Mr. Ransom: I offer this contract in evi- 11462
dence.

Q. This contract was the contract for the calendar year, 1919, or was the 1919 contract, as signed on December 18, 1918?

A. For the calendar year 1919, for the stipulated number of gallons.

By Mr. O'Brien:

Q. Did you begin to negotiate that before the armistice?

The Master: You need not answer that at this time.

By the Master:

Q. I would like to ask you, Mr. Addicks, while coun- 11463
sel are looking at that contract, what other commercial use is made of this grade of oil, this gas oil, so-called?

A. I do not think, your Honor, I can answer that question from personal knowledge, but simply by report. My belief is that this grade of oil is very close to or substantially that of the admiralty specifications of England. I do not think it is in this country.

Q. For what use; for vessels?

A. For vessels; yes.

Q. For oil burning vessels, you mean?

A. Yes. It probably also is used for Diesel engines. As I stated early in my testimony, it can be used for fuel.

The Master: I did not remember that you had made that statement. I was wondering what the source of demand would be for that character of article, other than for gas-making purposes.

Mr. O'Brien: I can answer that, if you want it, your Honor.

The Master. I don't want your answer. I
11465 want the witness's answer, if he knows.

The Witness: This gas oil is now subjected to an additional distillation at very high pressure, I understand about 1200 to 1400 pounds per square inch, and under those conditions, they get a material increase in the amount of gasoline for motors, and of course, that takes that away from our source of supply, because the residue is not of value to us.

The Master: Not of as much value.

The Witness: Well, I would say—

The Master: Well, you are using the residue?

11466 The Witness: Oh, no.

By Mr. O'Brien:

Q. Are you giving this from indefinite information now?

A. I stated at the beginning—

Q. You don't want to be bound by this, do you?

A. Oh, no, I stated at the beginning, to the best of my information, that I had not personal experience of it.

Mr. Chambers: May I examine him preliminary to the admission of this paper?

The Master: Yes, if it is preliminary.

By Mr. Chambers:

Q. Has this paper been modified in any way?

A. As to prices?

Q. Yes.

A. 1919? It has.

Q. It has?

A. It has.

Q. These prices in here are out of all proportion, are they not to prices quoted?

Mr. Ransom: I object to that question.

The Master: Objection sustained.

Mr. Chambers: Where is the modified contract? 11468

Mr. Ransom: You will have it in a few moments. It is right here.

Mr. Chambers: May I see that?

Mr. Ransom: No, not now.

The Master: I think I will let you see it.

Mr. Chambers: Then I object to this upon the ground that this is not the contract.

The Master: I shall rule that I will take that contract and any modification of it as one exhibit.

Mr. Ransom: This contract is the contract which was in force during a part of 1919. 11469

Mr. Chambers: Why not let us have it all? Maybe I will eliminate my preliminary questions.

The Master: This is not full of tricks, or anything like that. We want to get the facts.

Mr. Chambers: These prices are out of all proportion. There was an over-supply of oil in January of 1919.

Mr. Ransom: You are testifying more than Mr. O'Brien.

Mr. Chambers: I am cross-examining a big oil man on this thing.

Mr. Ransom: Who is that; yourself or Mr. O'Brien?

Mr. Chambers: The witness. The price of oil was about five cents.

The Master: Listen, gentlemen. The only question here is as to the signature to these papers. You will have a chance to look at them afterwards. It is only a question as to the authenticity of the document. All questions on cross-
11471 examination relating to the documents will come later on. You and Mr. Maltbie can look at these at your leisure. They will remain with you. I don't want to take away your chance to look at it, Mr. Maltbie, but I want to pass on the chance of their admission now.

Mr. Chambers: There was a modified contract.

The Master: The question now is as to its authenticity.

Mr. Chambers: I am only questioning the prices as being abnormally high. Was there any other or further modification, Mr. Addicks?

11472 The Witness: Yes.

Mr. Chambers: May I have that?

The Witness: Yes.

Mr. O'Brien: You mean modification No. 2?

The Master: You need not answer that. We won't designate it by numbers.

Mr. Chambers: Let us have them all. If there was more than one, could we have them all?

The Master: If Mr. Addicks says there was another, we will have the others too.

Mr. Chambers: Would you give them all, Mr. Addicks?

The Witness: Yes, if I can find them.

Mr. O'Brien: That is perhaps another modification.

Mr. Ransom: Mr. Addicks knows more about the modifications than you do.

Mr. O'Brien: When you knock on the door, he will give you what you want.

The Witness: I addressed a letter to the Standard Oil Company, making an offer to them to perform certain acts if they gave me the right to 11474 cancel the new contract.

The Master: And that copy of letter is here?

The Witness: That letter is here.

The Master: Was that answered in any way here?

The Witness: I beg your pardon.

The Master: Was that answered?

The Witness: I received the contract. I did not see any answer to that. I will not be sure that it was not sent.

By Mr. Ransom:

Q. The first contract for the 1919 supply was made on December 18, 1918. It that correct? 11475

A. That is correct.

Q. On December 17th you sent a letter to the Standard Oil Company of New Jersey, of which you have here produced a carbon copy?

A. Yes, sir.

Q. Subsequently, on the 28th day of March, the contract of December 18, 1918, was modified?

A. Yes, but before that modification there was also—we received a notice on January 16th that the freight rates for transportation had been affected, which would affect a further modification.

Mr. Ransom: That is why I was anxious to take these up one at a time.

The Master: That is all right. It will not do any harm at all.

Q. Is this carbon copy that you have produced in any respect believed by you to embody the contract subsequent to or modifying this agreement of March 23, 1918? Was this something that led up to the agreement of March, 1919?

Mr. O'Brien: I object to the question, whether it led up to it, or as cause and effect.

11477

The Master: The question was not a proper question, but it will do no harm. What I want to know is this, Mr. Addicks—

Mr. Chambers: I was asking for the second modification.

By the Master:

Q. Prior to December 17th, you had been negotiating with the Standard Oil Company for the 1919 contract?

A. Yes, sir.

Q. As part of that negotiation you wrote them the letter of December 17, 1918?

A. Yes, sir.

11478

Q. Following that letter you got the contract of December 18, 1918?

A. Yes, sir.

Q. In pursuance of this letter of December 17th and the terms of the contract of December 18th, there was a modification contract of the 28th of March, 1918?

A. Yes, sir.

Q. In the meantime freight rates had changed?

A. And it is referred to in the modification?

Q. The freight rates had changed?

A. Yes.

Q. And that is referred to in the modification?

A. Yes.

Q. Is there any other paper or letter or agreement which in any way affected or modified the contract made in December and subsequently modified in March of this year?

A. No, sir.

Q. So that all these three papers now constitute all there is on that subject?

A. Yes.

The Master: And you offer these in evidence? 11480

Mr. Ransom: I do.

The Master: Here are the papers. The only question is whether those papers are authentic and sworn to as the contract. If so, I am going to allow them in, and you gentlemen can cross-examine as to any points that occur to you by reason of price or other conditions. I think you have had reasonable opportunity to look at that, Mr. O'Brien.

Mr. O'Brien: The more I look at it, the more I want to object to it.

The Master: Let us have your objections.

Mr. Chambers: I am going to object to that 11481 1917 contract.

The Master: This was made in December, 1918, for the 1919 requirements.

Mr. Chambers: The 1919 contract, I mean.

Mr. O'Brien: I want to call your Honor's attention first, and make objection to this provision in this agreement, which is marked paragraph 3:

"The price at which the party of the first part agrees to charge and the party of the second part agrees to pay for such oil shall be one and

one-half cents per gallon less than the prices specified in Section 4 of said contract, as modified by letter of T. J. Williams on behalf of the party of the first part, to W. R. Addicks, vice-president of the party of the second part, dated January 16, 1919, a copy whereof is thereto attached."

The Master: Yes.

Mr. O'Brien: There is no such letter attached to this contract. The only letter attached—

The Master: You have made the point. The
11483 paper is incomplete. We will see whether we can complete it or not. Do not let us have any more talk about it. Let me see that clause, will you?

The Witness: I have already testified to that letter.

The Master: The statement made by counsel does not seem to be borne out by the facts. There appears to be attached to this contract as stated, a copy of a letter from T. J. Williams to Mr. Addicks, dated January 16, 1919. Precisely the thing that is referred to in paragraph 3.

Mr. O'Brien: What I referred to, your Honor,
11484 is rather not the letter of January 16th, which is specifically named in the body of the contract, but the letter referred to in the letter of January 16th, to wit, a letter presumably sent by T. J. Williams to W. R. Addicks, on January 8th.

The Master: Let us see that. It reads: "Referring to our letter of January 8th." Have you got that letter?

The Witness: I will see. Here it is (producing paper).

The Master: Mr. Addicks, in the copy of letter from Mr. T. J. Williams to you, dated Janu-

ary 16, 1919, made a part of the modification agreement of the 28th of March, 1919, reference is made to another letter from the Standard Oil Company to you or from Mr. T. J. Williams to you, dated January 8, 1919. Have you that letter?

The Witness: I have.

The Master: Is that the one you have just handed me?

The Witness: Yes, sir.

The Master: Then that letter will be included in the offer. 11486

Mr. O'Brien: Were these letters, either of them, answered? January 8th or January 16th?

The Witness: Here is the reply to the letter of January 8th.

Mr. O'Brien: Is that offered, too, your Honor?

The Master: No.

Mr. Ransom: Although these are entirely inconsequential, so far as we are concerned, I have no objection to offering them.

The Master: They may be unimportant. Have you any other objection, Mr. O'Brien?

Mr. O'Brien: I am a bit confused because the witness stated, as I remember it—maybe he meant the 1918 contract—that he had asked the company to arrange to give a reduction if the freight rates or the war tax were reduced. 11487

The Master: There is no question as to that.

Mr. O'Brien: You said they had reduced the freight rates?

The Master: Wait a minute.

Mr. O'Brien: I know it is cross-examination, your Honor, but it will clear this up. This is not complete now.

The Master: No, we are going to get rid of these papers now. If there is any further objection I will hear it. If not, I will rule them in.

Mr. O'Brien: I object to them on the ground that it does not appear that these are the real contract papers between the complainant and the Standard Oil Company. That it has not been shown that the officers of the Standard Oil Company, or the people who control it are not in the directorate or the executive committee of the com-
11489 plainant company. That it has not been shown that the directors or trustees as they have been called today, of the Consolidated Gas Company are not in the directorate of the Tidewater Company, or not connected through ownership with the other gas oil companies that could have supplied oil to the complainant at that time. In other words, it is not admissible evidence here of the price that could be obtained by the company at the time that this alleged contract is presumed to have been negotiated.

The Master: The objection is overruled, and the Court admits in evidence the following pa-
11490 pers:

First, the paper dated the 18th of December, 1918. That may be marked. I am not going to let this paper in.

Mr. O'Brien: Is your Honor excluding some paper?

Paper received in evidence and marked Complainant's Exhibit 303.

The Master: I also allow in evidence the modification contract of the 28th of March, 1919, which may be marked Complainant's Exhibit 304.

Paper received in evidence and marked Complainant's Exhibit 304.

The Master: I also allow in evidence the letter of the Standard Oil Company by T. J. Williams to Mr. Addicks, vice-president, dated January 8th, 1919, being the letter referred to in the letter of January 16th, which is attached to the agreement of March 23rd, in order to get that complete. That will be marked Exhibit 305.

Mr. Chambers: I think if that contract is in, the first one, the letter ought to go in of December 17th. 11492

The Master: No, it is a statement that, "If you will put something in your contract we will promise to do something," and it does not mean anything.

Mr. O'Brien: Make the price seven and a half; that is what it means.

Mr. Ransom: There is no objection to that going in evidence.

The Master: Ask the next question, Judge Ransom.

The letter was marked Complainant's Exhibit No. 305 of this date.

By Mr. Ransom: 11493

Q. The contract of December, 1918, for the 1919 supply, was not what you have described as a flat rate but was on the basis of a price which included variances for lighterage?

A. Yes, sir.

Q. And the price was 7.5721 cents for the East 21st Street branch—

The Master: Judge Ransom, I will not permit that. I told you before the paper is in evidence.

Q. Can you give the variances in lighterage?

The Master: Do they not appear from the contract?

Q. Do they fully appear from the contract?

A. Yes, sir, I think everything appears in the contract.

Q. Was this contract made on the basis that, "The prices above mentioned are based on the lighterage rates given below, plus the government tax of 3 per cent on transportation, and it is mutually agreed that if the lighterage rate or war tax is increased or decreased the price will be correspondingly adjusted"?

11495 Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. Counsel is endeavoring now to argue into this record a reason for the change in the rate, and charge it all up to a change in the lighterage rate and freight rate.

The Master: The objection is overruled. I am going to ask the witness myself, to get this quickly on the record—

Mr. O'Brien: I object to it on the ground the contract speaks for itself and is, under the oath of the witness, declared to embrace all of the agreements.

The Master: Was there any adjustment, Mr.

11496 Addicks, of any kind, other than that adjustment as to the lighterage rates set forth in the letter of January 16th?

The Witness: I recall none, sir.

Q. Was there any decrease in the lighterage rate or war tax?

The Master: That is covered by my question. There was no adjustment of any kind, he said.

Mr. Ransom: I would like also to have my question asked.

The Master: But my question included it. Ad-

justment included everything—that is up and down or crossways. It is an adjustment. I asked him if there was any adjustment and he said no. That is enough.

The Witness: These questions, as I understand it, are restricted to the Consolidated Gas Company?

The Master: Yes.

The Witness: There were others in connection with the contract reflecting Peekskill and White Plains, but I did not intend in these answers to include anything but the Consolidated 11498
Gas Company.

Mr. O'Brien: How far does that limitation now go?

Mr. Ransom: I object to Mr. O'Brien interrupting the examination.

The Master: Objection sustained. Mr. O'Brien's turn has not arrived yet.

Mr. O'Brien: If your Honor reads this record tomorrow you will not know it. It is just as murky as the day outside.

The Master: I know what has been testified to without reading the record.

Q. During the period of this contract, Exhibit No. 11499
303, was there any increase in the lighterage rate or war tax and, if so, as of what date?

A. Yes.

Mr. O'Brien: Your Honor, I am going to object to that because the papers in evidence indicate the date of that change, and what the witness may say about the change will not change those contracts.

The Master: I think so. I think it is perfectly clear that there was an adjustment, an in-

11500 Walter R. Addicks, Direct.

crease in the lighterage rates about January sometime.

Mr. Ransom: Effective February 8th, 1919.

Q. Is that the fact?

The Master: It says so in the paper I have admitted in evidence.

Mr. Ransom: I still have to prove the fact.

The Master: Not when I have permitted the letter in.

Q. Has there been any other change so far as the Consolidated plants are concerned in the lighterage
11501 rates during 1919?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: I will allow that.

Mr. O'Brien: The contracts in evidence indicate the lighterage rates on which the complainant company and the Standard Oil Company of New Jersey agreed.

The Master: I know your point, Mr. O'Brien. I understood the witness to say over and over again there was not any further adjustment after January 8th, effective February 8th, 1919. If there was I will hear it.

11502 Q. Has there been at any time in 1919, any change in lighterage rates or war tax, other than the change in lighterage rates effective on February 8th, 1919?

A. I recall none.

The Master: We have had it three times.

Q. Mr. Addicks, at the time you started the negotiation of a contract for oil supply during 1918, did you take up the matter by correspondence or otherwise with any company which you regarded as possible vendors of oil?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: I will strike out the part as to what he regarded. Did he take it up with anyone?

Mr. Ransom: If so, who?

A. I did with the Atlantic Refining Company, the Gulf Refining Company, the Sun Oil Company, the Texas Oil Company, the Tidewater Oil Company, the Gulf Oil Corporation and the Standard Oil Company of New York.

Q. And the Standard Oil Company of New Jersey?

A. No, I negotiated with the Standard Oil.

Mr. O'Brien: You did not write to the Standard Oil of New Jersey. He took care not to write to them. 11504

Mr. Ransom: I object to the continued interruptions of counsel.

The Master: Yes.

Mr. O'Brien: I really feel I am stultifying myself in being a participant in these affairs.

The Master: You need not take any part in it.

Mr. O'Brien: The letters are read in, so they speak for themselves.

Mr. Ransom: Then we will agree on one thing.

Mr. O'Brien: Two lines and a half—"Will you kindly send us the price for oil?" 11505

Mr. Ransom: Wait until you see them, and the replies.

Q. And you got replies from each of those companies you have mentioned?

A. I did.

Q. Including the Standard Oil Company of New York?

A. I did.

Q. Did you get replies from any of the companies?

A. I got a reply from the Atlantic Refining Com-

pany on November 19th, in reply to my letter of the 18th of November.

Q. Were those letters that you have described written under date of November 18th, 1918?

A. My letter was written under date of November 18, 1918. I received a reply from the Gulf Refining Company on November 21st, from Pittsburgh; from the Gulf Refining Company of New York, on November 21st; from the Sun Oil Company under date of November 30th; from the Sun Oil Company—may I strike out that last answer? From the Sun Oil Com-
11507 pany, November 19th, and another letter from them on November 30th. From the Texas Company on November 25th, and from the Tidewater Company on November 26th.

The Master: You offer all those in evidence, do you?

Mr. Ransom: I offer those various letters, the various replies.

Q. The letters were sent in the same form to each of these companies?

A. They were sent in the same form. There is one company I left out, the Standard Oil Company of New York, which replied on December 11th, and
11508 my letter to them was dated December 10th.

The Master: These are offered in evidence, are they?

Mr. Ransom: I offer in evidence the various replies and I offer in evidence the carbon showing the form of letter sent.

The Master: We will take in evidence over the same objection as was made to the other letters of other years, the replies of the various companies, the letter to the Standard Oil Company of New York, of December 10th, and one of the carbons to the other companies, so as to give the form.

Mr. Ransom: The carbon of the letter to the Atlantic Refining Company of November 18th.

The Master: They will be marked subject to objection, then you can look them over afterwards. The same objections as are noted to the other letters are made to these.

Mr. O'Brien: I object to the admission of both the letters of Mr. Addicks and the papers that purport to be answers of the several companies, the letter of Mr. Addicks being dated November 18, 1918.

The Master: There is another to the Standard 11510
Oil Company of New York, dated December 10th. That may be a little different in form. Is that the same form?

Mr. Ransom: I think it is the same form.

The Witness: I think it is identical.

The Master: Then one form will do.

Mr. O'Brien: I object to that on the ground that they are incompetent, irrelevant and immaterial, in the face of the issues in this case. Presumably they have been offered to show an effort, or a form of an effort to secure the lowest price and encourage competitive bidding. On their face they exclude competition. 11511

The Master: Then they are of no value.

Mr. O'Brien: They do not lay down the conditions under which the price will be received—

The Master: That all bears upon the weights to be given them. They are offered, as you say, on the theory that they indicate an effort to get in good faith, oil at a better price and on better terms. You say they do not.

Mr. O'Brien: Again, that the letter of the Sun Company of November 18, 1918, signed by one Morgan puts up a proposition, and asks for

information of the complainant company, and it does not appear that that was ever answered, and if it was answered, the chain of correspondence would be incomplete without such answer.

On the further ground that there is nothing before the Court in the record to show that this is all of the negotiations that was made with these companies. It does not appear what conversations were had with these various representatives, and again, that the men who purport to sign these
11513 letters were authorized to sign them. In almost every instance the letter is signed by the district sales manager, instead of the New York manager of the office. Take the Texas letter, for instance, that quotes a price. It is not from the man who dominates that institution down in Battery Place, but some superintendent, and therefore, we cannot assume, on the face of things, that these letters have come from the companies and are bona fide replies to a letter soliciting a price as to oil.

On the further ground that the letters sent by Mr. Addicks do not set forth the various con-
11514 ditions under which they would enter into contracts, and that they show on their face that they are simply forms gone through for the purpose of preparing for this case.

The Master: The objections are overruled.

Mr. O'Brien: Exception.

Mr. Chambers: I did not get a chance to look at them.

The Master: The same objections and ruling.

Letter of Standard Oil Company of New York to Mr. Addicks, dated December 11, 1918, received in evidence and marked Complainant's Exhibit No. 306.

11515

Copy of letter of Mr. Addicks to the Standard Oil Company, dated December 10, 1918, received in evidence and marked Complainant's Exhibit No. 307.

Letter of the Atlantic Refining Company to Mr. Addicks, dated November 15, 1918, received in evidence and marked Complainant's Exhibit 308.

Copy of letter of Mr. Addicks to the Refining Company, dated November 18, 1918, received in evidence and marked Complainant's Exhibit 309.

Letter from the Gulf Refining Company of Pittsburgh, dated November 21, 1918, received in evidence and marked Complainant's Exhibit 310.

11516

Letter from the Gulf Refining Company of New York, dated November 21st, to the Consolidated Gas Company, received in evidence and marked Complainant's Exhibit 311.

Letter from the Sun Company to the Consolidated Gas Company, dated November 18, 1918, received in evidence and marked Complainant's Exhibit 312.

Letter from the Sun Company to the Consolidated Gas Company, dated November 30, 1918, received in evidence and marked Complainant's Exhibit 313.

11517

Letter from Texas Company to the Consolidated Gas Company, under date of November 25, 1918, received in evidence, marked Complainant's Exhibit 314.

Letter from the Tidewater Oil Company to The Consolidated Gas Company under date of November 26, 1918, received in evidence, and marked Complainant's Exhibit 315.

Adjourned to October 3, 1919, at 9:15 A. M.

Last Complainant's Exhibit 315.
Last Defendants' Exhibit MM.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 11521

Before Abraham S. Gilbert, Special Master.

New York, October 3, 1919.

Met pursuant to adjournment.

Present: Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.
Mr. Chambers, of Counsel for defendant Newton.
Mr. Hayward, Mr. Clark and Mr. Neumann, of Counsel for Public Service 11522
Commission.
Mr. O'Brien, of Counsel for defendant Swann.

Walter R. Addicks, resumed the stand.

Direct-examination continued by Mr. Ransom:

Q. Mr. Addicks, since you left the stand yesterday has it occurred to you that with respect to the make up of the executive committee during a part of the period concerning which you were interrogated yesterday you wish to make any modification of your testimony? 11523

A. Yes. In answer to Mr. O'Brien I said there had been no change and I neglected to mention the death of Mr. Sterling in 1916, Mr. Garver succeeding him.

Q. Mr. Garver was not a member of the executive committee of the Consolidated Company until the death of Mr. John W. Sterling?

A. That is right.

Q. And upon Mr. Sterling's death Mr. Garver succeeded him and has since served?

A. Yes, sir.

Q. In other respects the personel of the executive committee was as you have stated?

A. Yes, sir.

Q. I do not believe I offered yesterday a preliminary letter of reply from the Sun Company in reply to your letter of July 28, 1918. Is this that letter (handing to witness)?

A. Yes, sir.

Q. And upon receipt of it did you communicate by telephone with someone connected with the Sun
11525 Company?

A. Yes, sir.

Q. And give the information therein requested?

A. Yes, sir.

Mr. Ransom: I do not think the letter is consequential, but I am willing to put it in evidence.

Mr. O'Brien: I do not think any of them are consequential.

The Master: Do you offer it?

Mr. Ransom: I offer it.

Mr. O'Brien: You just spoke about 1918 in your question. This is a 1916 letter.

Mr. Ransom: Yes, it is 1916; that is right.
11526 The letter is dated July 29, 1916, in reply to a letter of July 28, 1916.

Mr. O'Brien: I object to the letter being received as incompetent, irrelevant and immaterial.

The Master: Let me see it (taking letter).

Mr. O'Brien: I object first on the ground that we have not had the testimony as to the preliminary transactions between the complainant company as represented by F. S. Jr., whose memo is on that letter and the Sun Company. It does not appear whether the written correspondence embraces all of the preliminary negotiations that led up to a final declination on the part of

the complainant company of any offer from the Sun Company.

I respectfully submit, your Honor, that correspondence of this kind is clearly inadmissible. It was not correspondence that terminated in the making of a contract; it is not even part of the *res gestae*. The contract, as I remember it, was not made until December, and I object to it on the further ground that while it is introduced to show the attempt to solicit bids, it bears evidence on its face that it really was intended to stop competition by setting up conditions that 11528 they apparently knew the party sought in the letter could not comply with.

The Master: This will be marked Exhibit 316. It is received over the objection of Mr. O'Brien, and exception allowed.

Marked Complainant's Exhibit 316.

Q. Mr. Addicks, the contract of December 18, 1918, for 1919 oil, Complainant's Exhibit 203, contained a right of cancellation on the part of the Consolidated Company as of June 30, 1919. Was that right exercised or were there negotiations before that time, and if so, what were the negotiations?

The Master: Did those negotiations result in 11529 that contract of March, 1919?

Mr. Ransom: What were the negotiations, what were the circumstances under which they got a new contract, instead of exercising the right of cancellation.

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial, your Honor.

The Master: I will sustain the objection.

Mr. Ransom: Does your Honor rule that we may not show what circumstances led up to the obtaining of the more advantageous price in 1918?

11530 Walter R. Addicks, Direct.

Mr. O'Brien: Your Honor, it is clearly outside the rule: they cannot go to work and modify something without giving us the *res gestae*.

The Master: They are not trying to modify it.

Mr. O'Brien: They are not trying to destroy the instrument by showing there was collusion or fraud or an inducement that was fraudulent. He is trying to add to that by showing circumstances surrounding it, and I object to it.

The Master: What Judge Ransom has just
11531 said is rather different from his question. I will let him ask in his question that the witness state the conditions at the time the contract was made, what condition arose, or something of that sort.

Q. State the circumstances and conditions under which the modifying agreement of March 28th, Complainant's Exhibit 304, was taken up?

The Master: In other words, what happened at that time?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: That objection is overruled and exception allowed.

11532 Mr. Ransom: State it fully, Mr. Addicks.

The Master: I just want to know what occurred. Was there a drop in freight rates, was there a drop in oil—just the facts, what occurred.

Mr. O'Brien: Your Honor, I respectfully suggest that it is incompetent, irrelevant and immaterial

The Master: You have made your objection.

Mr. O'Brien: There was a market price at this time, and the market price was away below the price they paid in the modified contract.

The Master: I have ruled on your objection.

I am going to hear what the witness says about this.

Mr. O'Brien: They cannot charge it up to freight rates.

A. Sometime prior to the date of the modified contract, Mr. Williams asked me to come in to see him, and he offered me at that time the—

Mr. O'Brien: Are you reading now from a memorandum made by F. S., Jr.?

The Witness: I am not reading from anything.

Mr. Ransom: He is not reading from anything. 11534

Mr. O'Brien: Your Honor, the witness is refreshed now from something—

The Master: Have you not just heard the witness say he is not reading from anything, Mr. O'Brien? What is the use of arguing it? He has the contract in front of him, that is all.

Mr. O'Brien: Interlaced with these letters he has memoranda.

The Master: But he is not referring to any now. If he had, I would let him.

Q. Proceed, Mr. Addicks.

A. (Continuing.) —offered me this reduction in 11535 price.

Q. What reduction?

A. The cent and a half per gallon below the prices as provided for in the original contract of this year.

Q. A contract for December 18th?

A. December 18th, for the year 1919, as modified by a letter which advanced the freight rates or the transportation rates, which was referred to yesterday. Well, it is in the contract here, a copy of it is in the contract, January 16th, effective February 8th.

Q. Referring to the letter Complainant's Exhibit 305?

A. Yes.

Q. And this was to be effective as stated in this contract, April 1st. I took the matter under consideration, and at a later date informed Mr. Williams we would accept it, but with the further provision that he would allow us to modify the quantity of oil that was to be delivered in 1919 from April 1st.

Q. What modification did you ask for?

A. The original contract provided for 122,000,000 gallons, and with the right of cancellation on the first of July for one-half the amount, 61 gallons.

11537 Q. Sixty-one million gallons?

A. Sixty-one million gallons. And this eighty-two million gallons, which is specified in the supplemental contract was from a calculation of the probable amount of oil that we would use for the remainder of the year 1919.

Q. Would this modification as to quantity involve an increase or decrease in the quantity of oil which you might receive from this company during the remainder of the year 1919?

A. A decrease.

Q. A decrease?

A. Decrease.

11538 Q. At the time you talked with Mr. Williams, was anything said about your right of cancellation of the contract of December, 1918? What did he say about that, if anything?

A. This was given as a surrender of our right of cancellation for July 1st.

Q. That is, on July 1st you would have had a right to have terminated this December 18th contract as far as 61,000,000 gallons was concerned?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, on the ground that the contract speaks for itself. The witness is

asked to give us a legal interpretation of the provisions of the contract.

The Master: Objection sustained.

Mr. Ransom: I will withdraw the question.

Q. As of what date did Mr. Williams say that lowered price would be made effective?

A. April 1st.

Q. Was there anything that took place in that connection up to the time of the making of the agreement, Exhibit 304?

A. Exhibit 304?

Q. Isn't Exhibit 304 the modifying contract? 11540

A. Yes.

Q. Well, have you stated the substance of the negotiations which led up to the making of the modified contract?

A. With Mr. Williams, yes.

Q. I notice that I did not ask you yesterday for the 1911-13 contract. Have you a contract or the contract which was made covering that period concerning which you testified yesterday?

A. Yes (handing paper).

Q. Is this paper produced by you from the files of the company dated January 1, 1911, the contract to which you referred yesterday? 11541

A. Yes, sir.

Q. This being a contract with the Standard Oil Company of New York?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

The Master: Show it to counsel.

Q. Mr. Addicks, have you also produced the (off the record)—

Mr. Ransom: I offer in evidence the letter dated November 1, 1905, from the Standard Oil Company of New York by C. M. Higgins, Manager,

and the reply of the Consolidated Gas Company thereto, under date of November 1, 1905, signed by W. R. Addicks, vice president.

The Master: Now, if there are any other contracts you want to offer, offer them at this time.

Mr. O'Brien: I might at this time record my objection—

The Master: No, I will ask you to record your objections to all of these at once, to save time.

Mr. O'Brien: Well, in this connection, there are a couple of points about this contract—

11543 Mr. Ransom: I think there are two contracts, if the Court please, that were called for yesterday afternoon which it was not possible to get from the files of the company after the adjournment yesterday. As soon as the files were opened this morning they were to be gotten out and sent down here, but they have not yet arrived. Those are all we have here.

The Master: Are you ready to take up that other contract?

Mr. O'Brien: Yes. Before making my objection, it is neecssary for me to ask the witness—

The Master: I won't permit any preliminary

11544 questions.

Mr. O'Brien: Preliminary to my objection to the instrument?

The Master: No. I am going to stop it. I have reached the conclusion we get nowhere with them. The witness has testified that is a contract between his company, and the Standard Oil Company of New York, I think it is signed by both sides, and it bears a date, and if you have any objection to it as a contract sworn to by the witness, I will take the objection.

Mr. O'Brien: Well, your Honor, this witness

has been called as the one man in the company who has control of and is supposed to know all about the oil business and oil contracts.

The Master: Yes.

Mr. O'Brien: We are asked here to consent to the admission of a paper.

The Master: No, you are not.

Mr. O'Brien: The very production of the paper and the offering of it carries that with it.

The Master: No, not at all.

Mr. O'Brien: However, we are presented here with a paper purporting to be a contract which 11546
bears upon its face indications that the complainant company either has entered into an agreement for something to be furnished that cannot be furnished, absolutely physically impossible, or else it is done to revamp their price to make it possible for them to charge in this case more than they have to pay for this oil.

The Master: That is a matter for general cross-examination. The only question here is, is that a genuine paper. That is the only question at this time. What you have in mind are matters for general cross-examination.

Mr. O'Brien: Now, Mr. Addicks, this hasn't 11547
got a seal?

The Master: I said I won't permit any questions. If it hasn't got a seal, it is apparent on its face; you don't have to ask questions to bring that out.

Mr. O'Brien: Your Honor cannot anticipate what is in my mind.

The Master: I won't permit any questions.

Mr. O'Brien: Frequently when I have asked questions, your Honor has endeavored to anticipate or divine what I have in my mind, and

frequently your Honor has got the wrong idea of the purpose of the question.

The Master: Well, I haven't any idea at this time.

Mr. O'Brien: I have matters and knowledge of this case in my mind that is not in the Master's mind.

The Master: I have in mind that Judge Ransom has offered a written document.

Mr. O'Brien: Wouldn't it be proper for me to ask him whether this had the approval of the

11549 executive committee before I object to it?

The Master: No. That is all matter for general cross-examination.

Mr. O'Brien: I object to it anyway as incompetent, irrelevant and immaterial.

The Master: Let me see it.

Mr. O'Brien (continuing): As not having been shown that that was the whole contract, it appearing that there were transactions that were connected with it that are not in evidence; it appearing that there is no approval of this of the executive committee, and it appearing so far as the record goes, that there is no evidence that the

11550 witness was authorized to make a contract of this kind. And I object on the further ground that a member of the executive committee of the complainant company is an owner of large shares of stock in the company with which this contract purports to have been made.

The Master: What is the next exhibit number? Objection overruled. Exception allowed. This is marked in evidence as Complainant's Exhibit 317.

The Master: There were two letters making up another contract. Have you seen those, Mr.

O'Brien? Offer the next one while Mr. O'Brien is looking at that.

Mr. Ransom: I have no more until they come down from the company's office.

Mr. Chambers: Have you copies of these contracts?

Mr. Ransom: Not yet; I will have them made.

Mr. Chambers: Before we cross-examine we will get them?

The Master: I am not going to make that condition. You are going to cross-examine Mr. Addicks when he gets through here now, but if 11552
his cross-examination is not finished today, I am going to ask Judge Ransom to have copies made up, so that you can have them Monday.

Mr. Chambers: I suggest that he lay them all out here carefully, so that we will not be confused in calling for them in using them.

The Master: Yes, get the contracts all out. Is there any objection to these two letters?

Mr. O'Brien: I would ask the privilege of addressing a few questions to the witness with regard to the contract.

The Master: No.

Mr. O'Brien: I except to your Honor's ruling denying me that privilege. I desire to ask 11553
these questions preliminary to my objection.

The Master: No.

Mr. O'Brien: Exception. Now, to the instrument itself I object on the grounds that I have already stated with regard to the preceding contracts.

The Master: Objections overruled. The two letters dated November 1, 1905, one of the Standard Oil Company of New York, addressed to W. R. Addicks, vice president of the Consolidated

11554 Walter R. Addicks, Direct.

Gas Company, and the letter of the Consolidated Gas Company by W. R. Addicks, vice president, to C. M. Higgins, Standard Oil Company, are received in evidence over the objections, and exception allowed.

Mr. O'Brien: I object to the letters particularly on the grounds already stated as to the contracts, and on the further ground that the letters on their face indicate that they are only a part of a transaction, and do not bear upon their face any indication that it was the beginning of
11555 the transaction. There is something else referred to and, therefore, we haven't got the complete story and the complete transaction in the shape of letters. If there were previous letters passing between the parties, they should be produced before these letters would be admissible. They are all inadmissible on the ground that the contract would speak for itself, and that all previous correspondence would be merged in the contract; on the further ground that it does not appear that these contracts were approved by the executive committee of the complainant company, or that the representative of the Standard Oil Company,
11556 Mr. Higgins, was authorized to make such a contract with them, or that the witness Addicks was authorized to enter into an agreement of this kind.

I object on the further ground that the instruments bear upon their face evidences that they were designed to stifle competition, to make it possible for either party to evade, abrogate, null and escape from the provisions of the contract. This latter objection is based upon the language used in the papers submitted, so that on their very face, your Honor, they condemn the purpose for which they are being offered.

The Master: That all bears upon the cross-examination. They are received in evidence and marked Exhibit 318.

Two letters dated November 1, 1905, received in evidence and marked Complainant's Exhibit 318.

Q. Mr. Addicks, in the course of your duties have you known the quantities of oil which have been purchased by the Consolidated Gas Company for its various stations during each of the years 1913, 1914, 1915, and so on down to and including eight months of 1919? 11558

A. I have.

By the Master:

Q. Do you mean by that deliveries?

A. These are the quantities purchased.

Q. Are they the quantities purchased or the quantities delivered?

A. Purchased under contract.

Q. Not necessarily the amount delivered?

A. Delivered as provided for in the contract.

Q. What I want to get clear is this: Take, to illustrate, the year 1918, or 1919. One of them had 112,000, and the other 122,000. That was the purchase under the contract. Are the figures you are 11559 about to give, the amounts stated in the contract as the amount purchased or the amount delivered under that contract?

A. The amount delivered in a particular year, 1918, which would be under the contract; but there might be a delivery of the prior contract come in 1918, and there might be a delivery of the contract for 1918, which might run into 1919, but it is the amount of oil delivered in the calendar year.

Mr. O'Brien: I would ask counsel if he is producing this witness to prove deliveries.

11560 Walter R. Addicks, Direct.

The Master: We will see by the questions.

By Mr. Ransom:

Q. Have you made up for example for the year 1918, a statement showing the quantities of oil received by the Consolidated Company, purchased by the Consolidated for its various stations, the companies from whom purchased, the price paid, the amount paid; that is, the price paid per gallon, and the amount paid, together with the average price paid per gallon during the year?

Mr. O'Brien: I object to that as incompetent,
11561 irrelevant and immaterial.

The Master: He has just asked him if he has made up a statement, Mr. O'Brien. Objection overruled.

A. I have.

Q. And has this statement so prepared by you, and your assistants, working under your immediate direction, been checked against the original vouchers for the quantities so bought and paid for, and the prices paid for such quantities?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: The trouble with this method of
11562 proof, Judge Ransom, is that you cannot put in these statements as tabulations in that form. I have indicated by questions that I have asked several times, the theory on which I allow them as a short way of getting this witness's statement of fact, if he knows. Now, I take it, that this witness, in order to testify to a fact, has refreshed his recollection from the vouchers and other memoranda in his office, and having refreshed his recollection by those vouchers and other memoranda—and I am not at all interested in what he refreshed his recollection from—if

this witness is prepared to testify under oath that during the year 1918 he bought a certain amount of material, for which he paid a certain amount of money, I am going to let you lay the foundation for asking him how much he got from time to time. When it reaches that point I will take the statement he has prepared as the short way of getting the witness's statement of what he is willing to swear to under oath.

Mr. Ransom: I had supposed there was a rule of law which permitted a man to take a quantity of vouchers and make up a summary or tabu- 11564
lation of them.

The Master: If those vouchers are in evidence.

Mr. Ransom: I thought you had ruled that they are.

The Master: I have refrained from ruling that they are in evidence. I have said they are in the record. I draw a distinction between saying they are in the record and being in evidence. Now, I am inclined to think that if the situation develops at any time, and you offer all of the papers and records and vouchers as they are in your files, then I should probably rule them all as being in 11565
evidence, but I don't want to do that until I have to, or unless I have to. There is a good deal of difference between this particular kind of case and the ordinary case in this respect: With the counsel for the defendants having access to your records, they have access to them in a more convenient form than they would have in court, and it is simply a question of identifying the papers they are using and looking at; that is the only difficulty; otherwise there is no difference in principle why I could not admit all these vouch-

ers in evidence, send them back to the Gas Company, and give counsel an opportunity to consult them there as a matter of convenience. But I would rather take this witness's testimony, if he can give it, that he knows from memoranda that he has or has looked at, how much oil they got and paid for, and make the statement as a matter of knowledge, so that counsel may cross-examine on that, to show what the witness's testimony is worth. I suggest that you withdraw your last question, Judge Ransom, and ask
11567 the questions that I have indicated, so that I can take that statement in as a statement that the witness makes under oath of the facts.

Counsel for the defendants have called on counsel for the complainant to produce all of the contracts since 1906, and they are not yet all produced. There are one or two contracts missing. Counsel for the complainant has stated several times, I don't know whether it is in the record or not, that they apparently are in the vault, and were not accessible last night, that they are looking for them now, and they expect to produce them.

11568 Mr. Ransom: Do I understand your Honor to rule that in spite of the decisions in cases like the Arkansas case, or the Keyes case, and the like, that in order to permit a witness to put in evidence, or to be put in evidence through the testimony of a witness, a tabulation which he has made up, a tabulation of vouchers, that it is necessary that the vouchers themselves be in evidence and that the tabulation is inadmissible unless the vouchers have themselves been physically offered and marked in evidence? The thing which is held most specifically by the Supreme

Court of the United States in the Arkansas case, and by the Federal Court in the Keyes case, as well as in other cases to which I have directed your Honor's attention, was that if a tabulation is made up and tested by the man who made it, or had charge of the making of it, and the vouchers are produced and permitted to be examined by the other side, that that meets the requirements, as the Supreme Court said.

The Master: I decline to be interrogated.

By the Master:

Q. Mr. Addicks, can you tell us in any manner the 11570
amount of gas oil that you got from year to year and the prices paid for it?

A. I can.

Q. Have you familiarized yourself with those records and other information so that you can tell us about it?

A. I have.

Q. Could you tell us what the first quantity received in 1918 was, from whom, the price paid and where it went?

Mr. O'Brien: The witness apparently is reading from some paper. I object to his—

The Master: No, I am asking him whether he 11571
can tell me.

Q. Could you tell me if I asked you the question, as to how much was the first delivery, where it went, the date, the amount and the price you paid for it?

A. I could.

Q. Could you tell us the second?

A. I could.

Q. And so on?

A. And so on for the year.

Q. In order to get the matter started will you please tell us what the first quantity was that you got and paid for in 1918?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, for the reason that the testimony of the witness up to date, in answer to questions asked him by counsel, indicates that the paper which he now has in his hand and which he is reading to answer your Honor's question—that data which he has before him was prepared by some of the men in the Consolidated Gas Company office, from some papers in their office; that we have not the original data, and the witness has indicated in his testimony that he
11573 does not know, physically, directly, himself, but he has some papers before him prepared by some one who is not in court, from which he is reading.

The Master: I have heard your objection.

Mr. O'Brien: I want to argue it.

The Master: I do not want argument on it. I know your point. If I do not understand your point or am doubtful about it I will ask for argument; but I do not need argument on this.

Mr. O'Brien: He cannot get around the questions that were asked by your Honor any other way.

11574 Mr. Ransom: Let me ask one question.

The Master: Let me finish first and then if there is anything omitted that you want to ask, I will let you ask it.

Q. In order to tell me the amount of gas oil received on a particular date you had reference to the vouchers?

A. I did.

Q. And the amount that you are about to state is an amount taken from the vouchers?

Mr. O'Brien: I want to object to your questions as you go along. This last question I ob-

ject to as incompetent, irrelevant, immaterial, particularly on the ground that the language used is so vague as to render the questions inadmissible. With reference to vouchers does not mean anything. I record my objection to the question.

The Master: Objection overruled.

Mr. O'Brien: I take an exception to your Honor's ruling.

Q. The voucher to which I refer is a bill rendered for the merchandise?

A. Yes, sir. 11576

Q. Which was paid?

A. Yes, sir.

Q. And the money came out of the treasury of this company?

A. It did.

Q. This voucher is in the files of the company?

A. It is.

Q. Accessible to the defendants?

A. It is.

Q. Tell me where the first delivery is?

A. 21st Street station.

Mr. O'Brien: I make my objection to the question on the same grounds heretofore ex- 11577
pressed.

The Master: Overruled.

Mr. O'Brien: Exception.

Q. And the date is what?

A. The date is 12/31/17, 21st Street station, 326,001 gallons.

Q. The 31st day of December, 1917, is the date of the voucher?

A. 12/31.

Q. Why does that go into 1918?

A. Undoubtedly because it was delivered in 1918.

Mr. O'Brien: Your Honor, I respectfully suggest that counsel having carbon copies of the papers the witness is reading from, we be furnished them during the progress of the examination by your Honor.

The Master: You will in a minute.

Q. What was the price per gallon?

A. .065515.

Q. What was the total amount of that invoice?

A. $21,357.96.

Q. Does that item appear in the books of your
11579 company, in the operating ledgers and operating books of 1918?

A. That will appear in the sundry creditors' ledger under a proper folio which will be indicated on the voucher.

Q. Does it likewise appear upon the creditors' vouchers on file in your office?

A. Creditors' voucher?

Q. The pay voucher?

A. You are referring now to the pay voucher?

Q. Yes, on the pay voucher.

A. I have not checked that item, your Honor.

Mr. O'Brien: This was in January—a Jan-
11580 uary delivery, Mr. Addicks?

The Master: 1918.

Mr. O'Brien: Your Honor, I make a further objection, in addition to those I have already recorded, that our inspection of the journals, the testimony already in this case, the journals and sundry creditors' ledgers, indicate that invariably in January of the several years there were entries made there of payments to cover shipments or deliveries of the previous year, and if this was made up, therefore, from a voucher of January, 1918, it would be for deliveries made

11581

in the prior year and therefore the witness is manifestly incorrect.

The Master: Not manifestly, because the voucher itself may show that the material did not come in until 1918.

Mr. Ransom: And was not paid until 1918.

Mr. O'Brien: I object on the further ground that the witness has not indicated that he saw inventories of the amount of oil on hand at the time that the witness has not indicated how it was measured or who measured it; that he has not indicated that he himself knows of his own knowledge that deliveries were made; that he has taken the word of somebody else and his testimony is hearsay. It is the duty of the complainant company to produce the man who witnessed the delivery of the oil at the time it is alleged to have been delivered. Your Honor rules against me, I assume, and I note an exception.

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The Master: Yes, objection overruled.

Q. Have you prepared a statement, Mr. Addicks, which has indicated all of the items for 1918 in the same form that I have asked you in this previous question?

11583

A. I have.

Mr. O'Brien: Will your Honor permit me to ask him a question as to where he got this data he is reading from? He has not made it clear it was from the vouchers alone, and we are going to meet the same situation we did when Mr. Teele was on the stand and are going to waste more time getting this right.

The Master: He has said it was made up from vouchers.

Mr. O'Brien: Not solely from vouchers. So

far as his testimony goes it might have been made up from matters extraneous to this case.

The Master: I will ask Mr. Addicks a question to get that clear.

Q. Mr. Addicks, have you got in court the vouchers with reference to this first item about which you have been interrogated?

A. I have.

Q. Can you tell from that when that merchandise actually was delivered?

A. Yes.

11585 Q. What date?

A. On the 1st of January.

Q. What year?

A. 1918

Q. You have given me this information from some data that you have prepared, have you—about this first shipment?

A. I have it in a—

Q. (Interposing.) In a statement that you have prepared?

A. Yes, sir.

Q. How did you prepare that statement?

A. I called upon a man, a Mr. Schoenfish, and

11586 prepared a statement. I thereupon called for all the vouchers of which this is a sample and I personally checked every item appearing on the face of the bill, and I personally inspected the report of the superintendent as to that particular shipment having been received.

Mr. O'Brien: Your Honor, I submit respectfully that the original data would be the report made by the man who measured the oil when it came in. It has not appeared now whether these measurements, the basic measurements to determine what was delivered—it has not appeared

11587

whether they were made in Bayonne or some other place, or at the various stations. Presumably if it was made at the various stations we have a number of reports that are the books or records of original entry and which must have been referred to or even checked up by the witness.

The Master: There is nothing before us at this minute.

Q. In order to answer questions as to all other shipments during that year, the amounts paid and the like, you will refer to this same memorandum?

11588

A. Yes, sir.

Q. If this memorandum was received in evidence, is it your testimony that the facts stated on this memorandum are precisely the same as if you gave the testimony orally?

A. Yes, sir.

The Master: In other words, without going through each item—

Mr. O'Brien: I want to record my objection to these questions your Honor is asking.

The Master: Your objection is noted.

Mr. O'Brien: Exception.

Q. Without going through each item I ask you the question is if the fact that the quantities shown on this statement were received at the various stations indicated on that statement, on the dates indicated, at the prices indicated and the total amounts in the last column were actually paid therefor?

11589

A. Yes, sir.

Mr. O'Brien: I most respectfully object to this line of proof, because it is the same old

subject of capsule proof, and what is the use of our—

The Master: Haven't I indicated to you that I am going to allow that line of proof, and all you need do is make your objection, because I am going to allow it in. Now, you offer this paper, do you, Mr. Ransom?

Mr. O'Brien: I want to respectfully object to your Honor conducting the examination. I do that with all reverence to your position and all that, but I must record my objection.

11591 The Master: Your objection is overruled.

Mr. O'Brien: I think that the Court—

The Master: I am not going to permit counsel to ask the witness about two hundred questions to cover these various items when one question will cover them.

Mr. O'Brien: But frequently when objections are made, I appreciate that the Master has power to regulate the trial and a certain discretion over the order of proof, and the power to ask certain questions to bring out clearly the record and so on, but where the Master continually takes that matter up of catechising this witness, par-

11592 ticularly when the complainant strikes a snag, and is trying to put in something which is inadmissible, I think there is a limit to how far your Honor can go.

The Master: It is my purpose here whenever objections are raised which create a snag, as you put it, either when you do it or counsel for complainant does it in the line of testimony that you will put in, it is my duty to straighten out the snag and get the proof in. Judge Ransom offers this statement in evidence now as the testimony of this witness with reference to all of

these items, instead of asking each question separately of this witness.

Mr. Ransom: That is correct.

The Master: I will hear the objection on that.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, hearsay, secondary evidence, the tabulation or tables or testimony of the witness has for its foundation reports of the superintendents of the various plants of the Consolidated Company which are not in evidence, and which I submit should be in evidence before this testimony is given; that it is apparent from 11594 what he said that he has no personal knowledge that this oil was received at the various plants.

The Master: Mr. O'Brien joins in the objection, and the objections are overruled and exception is noted. In that connection I want to say, and in answer to Mr. Chambers, that in my opinion all of the supporting vouchers in the files of the Consolidated Gas Company having any relation or reference to any of the entries in the books of account accessible to these defendants, are as much in evidence as though they have been offered here and marked in evidence.

Mr. O'Brien: Well, may I call your attention 11595 to some matters in my objection?

The Master: This paper is marked Exhibit 319.

Mr. O'Brien: I want to make my objection, and it is more sweeping.

The Master: Give a copy to the other side.

Mr. Ransom: Yes (exhibit paper).

Mr. O'Brien: I object on the ground it is incompetent, irrelevant and immaterial, that the witness has not shown any actual knowledge of

the amounts of oil delivered from year to year, that he has not indicated that he knew of the amounts of oil on hand in the tanks to which were added from year to year or month to month, various deliveries of oil, so that he might make a correct computation; that he has not indicated in his testimony that he has examined the books and vouchers of original entry indicating on the part of the subordinate employees of the company what oils were actually delivered, and the quality of the oils; that it has not been
11597 shown that these witnesses are not available and may not be produced as witness in this trial. Further that the witness has not shown that this oil in these deliveries was the oil used by the Consolidated Gas Company. For aught we know, it may have been loaned, the oil that is said to have been delivered, might have been loaned or given away to some of the affiliated companies. That the witness's testimony is vague and general, and does not indicate where it was delivered or the conditions under which it was delivered. That it is hearsay upon its face; that the witness has stated that the only
11598 computation that he made to get up these tabulations was from vouchers which he said he checked. It is respectfully submitted that the vouchers are not papers of original entry, that the vouchers would be valueless without the papers of original entry which are the records made by the man who actually received and measured the oil.

And further objection is made, and supplemental to the last statement, further objection is that the testimony already in this case indicates

that at the several stations of the complainant company they had receptacles to which gas is pumped, that there was a method of measuring the gas and reports were made upon the amount of the deliveries. It is respectfully submitted that in the absence of proof of all of these matters, proof of the fact particularly that the gas in question was used by the complainant company, this paper may not be received. That the manner in which it has been offered, with the bare testimony of the witness that he himself took certain vouchers that Mr. Schoenfish has pro- 11600
duced and checked them up with this paper, does not bring it even within the rule that is asserted by Judge Ransom to be the law with regard to this question of evidence, of the law of evidence. On these grounds, therefore, I object, and assuming that your Honor is ruling against me, note an exception. And I would state, your Honor, that I feel at this time that I ought to record my protest against this manner of proof. I feel that the time and the money involved in this case is entirely wasted if the case is going to be built up in this way out of tabulations pro- 11601
duced in this manner by men who are many times removed from the original transactions that they assume to cover in tabulated statements.

The Master: Mr. O'Brien, suppose when this case is finished, that your experts and the complainant's experts both agree that the complainant company manufactured a certain amount of gas in its own works during the year 1918.

Mr. O'Brien: Your Honor, they will never agree upon that for the reason that, judging from the way in which they are measuring gas and judging from the statements already made

as to transferred gas, that very question of fact is going to be clouded and in doubt at the end of the case.

The Master: Well, suppose it is not.

Mr. O'Brien: Now, further—

The Master: We have got to assume something, some fact is going to be proved.

Mr. O'Brien: Here is the fallacy, here is the fundamental error in your Honor's position.

The Master: Will you wait until I get through?

11603 Mr. O'Brien: Yes.

The Master: Suppose, even though you won't agree with me that it will develop in that direction, but suppose the experts on both sides agree, and the witnesses agree, that there was manufactured five million cubic feet of gas, or ten million, whatever it may be, and they likewise agree that in order to make that gas it required a certain quantity of oil, and assume that for the purpose of the discussion, the amount of oil required per thousand cubic feet actually totaled thirty-three million cubic feet for the year. Wouldn't that come pretty nearly proving up
11604 the statement, irrespective of any errors here?

Mr. O'Brien: Well, now, you are assuming something that is not going to take place, and you are assuming something that involves four or five variable factors that embrace the very essence of the controversy in this case.

The Master: Well, we will have to assume it until we get through.

Mr. O'Brien: Here is the fundamental error, if I may respectfully point it out to your Honor. Here is the error you are laboring under right here, and that is this: It is the assumption all

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the way through from the beginning, that all the plaintiff has to do is to make out a *prima facie* case and the burden of this case is going to shift to the defendants, that they have got experts already employed, and whatever errors may be made, will be made good because the defendants will come in with expert proof.

The Master: Not at all. Here is the way my mind runs. If I can make it clear, I am going to do it at the expense of another minute or two.

11606

A man comes into court and says it costs him a certain amount of money to make a thousand suits of clothes. He proves that during the period of this manufacture he got in three thousand yards of cloth. I am taking three thousand deliberately, as compared with a thousand suits of clothes, because generally speaking it will take about three yards of cloth to make a suit of clothes. That is the experience of clothing manufacturers whom I represent. Now, suppose a witness is called in the same form as Mr. Addicks, and he says that during this period from the bills and vouchers that I got, we got three thousand yards of cloth, and even he goes on

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and says as a matter of fact there were one thousand suits of clothes made, and it develops later on practically without dispute, because there cannot be any dispute about that—I don't know whether there can be any dispute about the amount of gas oil it takes to make a thousand cubic feet of gas, but I know there cannot be any dispute within a fair variation as to the amount of cloth it takes to make a suit of clothes, and it develops that it does take an average of about three yards to a suit of clothes—it will

take probably more for you than for me, because you are stouter than I am, and probably less for Judge Ransom, because he is a thinner man than either of us.

Mr. O'Brien: He is pretty long, don't forget that.

The Master: But the average will work around to about three yards to a suit of clothes. Now, when I have got the quantity of suits actually made and the average amount of cloth that goes into each suit as compared with this
11609 testimony under attack that there was three thousand yards of cloth, I will take it as a fact proved to my satisfaction that there was a thousand suits of clothes and that there were three thousand yards of cloth delivered in order to make them up. Now, what is the use wasting time?

Mr. O'Brien: The use in wasting time is that you are in grave error, you are assuming an engineering knowledge that you haven't got.

The Master: I don't assume any engineering knowledge at all.

Mr. O'Brien: You have got an idea that this
11610 is a very simple proposition?

The Master: You cannot complicate a situation when it arises out of a simple fact that in order to make an article whether it is gas, clothing, shoes, or anything else, it requires, within some fair possibility of variation, a certain amount of material—that is not an engineering problem at all.

Mr. O'Brien: Well, your Honor, will you just bear with me a moment. You stated some hypothetical case as similar. You tried to point out the suit of clothes and the fellows who make

it. Let me tell you the simile you have got to follow if you want to be right in this case, and the conclusion is to be fruitful to anybody, and a satisfactory result—I mean a result beyond doubt. You have got to assume there is a man on trial for his life in this case. If you had Mr. Addicks as the defendant here, or Mr. Carter or Mr. Ransom, and the prosecution attempted to put them in the electric chair with tabulations —you have got the same rigorous measure of proof required, no matter what has obtained in the past where experts will get together for both 11612
sides and offer proof and they cross blades on various matters of reproduction cost and all that, no matter what obtains in the practice, practically every rate case has come back from the United States Supreme Court, and you cannot find a rate case where the Court upheld the utility. And why? Largely in those cases on account of the inadequacy of the proof or the improper proof. Now, that being so, if the same measure of proof requires that they prove their case beyond a rational doubt that every presumption must be in favor of the statute and all that, then you must follow the same conscientious scruples, 11613
the exact measure of proof, that you would were a man on trial for his very life. Then, your Honor can see right away that you could not prove this by presumptions, you cannot prove it by tabulations, and you cannot prove it by summaries made up by some man from a record taken from another record which was taken from another record. And that is particularly where they have available witnesses who could come in here without very much work and give you in

concrete form and in very short order a statement from their own actual knowledge as to the amount of oil that they measured at the tank. If they will produce them, we may find that there was serious error made.

The Master: Major Clark wants to object.

Mr. Clark: I want to join in the objections already made. I assume it has been put in before the paper is received in evidence?

The Master: Yes.

Mr. Clark: I further object on the ground
11615 that this tabulation appears not to have been made up from the original documents, that it is premature on the ground that we are not interested in the amount of oil delivered to the various plants of the Consolidated Gas Company, but in the amount of oil actually used, which can only be ascertained by finding the amount on hand at the beginning of the year and the amount on hand at the end of the year, and before that is proved this is premature.

On the further ground that there is no evidence in the case to show this oil was used solely for the Consolidated Gas Company, or used for
11616 other companies for making gas for other companies other than those of the Consolidated Gas Company; and on the further ground that there has been no offer by the complainants in this case, or any ruling by the Master which would allow the defendants to call in for cross-examination the men who actually made up this tabulation, or the men who are in charge of the original vouchers upon which it is based, under the ruling of the Keyes case.

The Master: The objection is overruled, and

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the paper is received in evidence and marked as Exhibit 319.

Q. Mr. Addicks, referring to Exhibit 319, have you in a similar way prepared in a condensed form the facts which would be your testimony with respect to each of the years 1913, 1914, 1915, 1916, 1917 and the eight months of 1919?

A. I have.

Q. And are these the statements, and if interrogated would you set forth in your answer each of the facts appearing in these tabulations?

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A. Yes, sir.

The Master: You do testify to those facts?

The Witness: I do.

The Master: As set forth on those tabulations?

The Witness: As set forth on those tabulations.

Mr. Ransom: I offer them in evidence.

Mr. Chambers: The defendants object—

The Master: Same objection?

Mr. Chambers: Yes.

The Master: It cannot be any different, can it?

11619

Mr. Chambers: Well, I lost an opportunity to add to mine something.

The Master: Well, add to it.

Mr. Chambers: The same objection with the addition of this, that as to some of these years he is now covering the contracts have not even been offered in evidence.

Mr. Ransom: There isn't any year for which the contracts are not in evidence which are—

The Master (interrupting): Yes, there is.

Mr. Ransom: I mean which are within these tabulations.

Mr. Chambers: 1914 has not been offered; 1913 has not been offered.

The Master: I am going to overrule the objection.

Mr. Chambers: That defendants are deprived of the right of cross-examination of the superintendents of the various plants where this oil was received; that the supporting data and vouchers for a number of these years now covered by the offer have not been offered in evidence. With what I said heretofore, that is sufficient.

11621

The Master: The objections of counsel for the various defendants, all joining, as I understand it, in the objections heretofore made, and the additional grounds stated by Mr. Chambers, are overruled, exceptions allowed, and the papers received in evidence.

Statement for 1913 received in evidence, marked Complainant's Exhibit 320.

Statement for 1914 received in evidence, marked Complainant's Exhibit 321.

Statement for 1915 received in evidence, marked Complainant's Exhibit 322.

11622

Statement for 1916 received in evidence, marked Complainant's Exhibit 323.

Statement for 1917 received in evidence, marked Complainant's Exhibit 324.

Statement for the eight months of 1919 received in evidence, marked Complainant's Exhibit 325.

By the Master:

Q. Did you calculate the averages yourself on all of these, Mr. Addicks, or check them?

A. I personally checked the average on every one of these sheets.

Q. So you can testify to the averages as computed by you?

A. I can.

By Mr. Ransom:

Q. That is a weighted average?

A. Yes, sir, that is the average of all the oil, divided by the amount of money paid.

The Master: I just wanted to make sure that Mr. Addicks had made the computation.

By Mr. O'Brien:

Q. Did you make that weighted average?

A. I did not make the weighted average, but I 11624
checked the weighted average by reversing it and getting the original figures.

By Mr. Ransom:

Q. Have you made up on this sheet which I now show you a condensed form of your testimony covering the years 1906 to eight months of 1919, showing as to each year the quantity in gallons purchased for the use of the Consolidated Gas Company, the total amount paid, and the weighted average price for each such year?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. The evidence already in will speak for itself, and this condensation is 11625
always a source of error, and it is immaterial.

The Master: I will take it under the same objections as heretofore made to the other papers and allow an exception.

The Witness: That was made under my direction for the prior year, and the figures that appear on these others appear on that statement in condensed form.

Statement received in evidence and marked Complainant's Exhibit 326.

Q. Mr. Addicks, have you had charge of making the agreements and the fixing of prices for the sale by the Consolidated Gas Company of certain by-products from its manufacture of gas?

A. I have.

Q. What are the by-products of plants of the Consolidated Gas Company of which you have handled the sale?

A. From the coal gas plant, coal gas tar, ammoniacal liquor; and from the water gas plants, water gas tar, and holder or light oil.

11627 Q. Is holder oil sometimes called light oil?

A. Sometimes called light oil, or drip oil, at times it is called.

Q. Will you state what arrangements, if any, are in force on behalf of the complainant company for the sale of by-products covering 1918-1919, and with whom? First, with whom?

A. The contracts are with the Barrett Manufacturing Company.

Q. Are they written or oral?

A. For 1918—all the contracts are in written form, although the forms may vary.

Q. Will you produce such contracts as are in force?

11628 A. I produce an ammoniacal liquor contract and a coal tar contract.

Q. The ammoniacal liquor contract produced by you from the files of the company, bearing date July 1, 1910, is that the contract just said by you to now govern the sale of the ammoniacal liquor?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. This produced by you is the contract?

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The Master: Is that the contract that is still in force?

The Witness: This contract is still in force.

Q. What other contracts?

A. I also produce one for the coal tar.

Q. The ammoniacal liquor contract was for a term of ten years?

A. They are both for the same term.

The Master: The coal tar contract bears the same date—with the Barrett Manufacturing Company? What date does the coal tar contract bear?

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Mr. Ransom: July 1, 1910.

Mr. O'Brien: That is ten also?

The Master: If on cross-examination you show that there is an intercorporate relation, that all bears on the matter of good faith.

Mr. O'Brien: As we go along, there are a lot of matters that could be cleared up that saves a lot of time.

The Master: I don't think you save on time.

Mr. O'Brien: One question now saves ten later on.

The Master: No, I don't think so.

11631

Q. What other by-product or residual contracts have been negotiated by you and are applicable to the sale of these by-products during the year 1918 and 1919?

A. I have here an agreement dated the first day of January, 1918, between the Consolidated Gas Company and the Barrett Manufacturing Company, with reference to drip oil.

By the Master:

Q. How about your water gas tar?

A. I have a contract between the Consolidated Gas

Company and the Barrett Manufacturing Company for water gas tar from the first day of January, 1918, to the 31st day of December, 1918.

Q. How about the 1919 contract for gas tar?

A. The 1919 contract will be in the shape of letters.

By Mr. Ransom:

Q. With respect to the drip oil contract and the water gas tar contracts, they were for the calendar year 1918?

A. No, with respect to water gas tar. I did not
11633 note the period of the drip oil.

Q. The 1919 is covered by letters which you have?

A. 1919 would be covered by letters which I have.

Q. How long has the Barrett Company taken all of your residuals, Mr. Addicks?

A. Between forty and fifty years, as far as I recall.

Q. You have never sold residuals to anybody but the Barrett Company?

A. No, I could not say that. You are speaking now only of the Consolidated Gas Company?

Q. Yes. I am talking about these residuals, coal tar and water gas tar and drip oil and ammoniacal
11634 liquor.

A. We have sold to other parties, using the Barrett Company as agents.

Q. So that you have either sold directly to the Barrett Company for their use, or through them as agents?

A. So far as I remember, within my experience with the company.

By Mr. O'Brien:

Q. Are you producing the toluol contracts?

The Master: Wait and see what he produces.

Mr. O'Brien: Thereby hangs a tale.

11635

The Master: All right, we will get that tail when we get to that kite.

The Witness: I have here a contract dated August 1, 1919, which provides for the payment of water gas tar for 1919. Accompanying this are letters from the Barrett Company, dated July 24, 1919, and July 15th. That covers the water gas tar. I have still another one, July 2, 1919, a letter from me addressed to the Barrett Manufacturing Company, which has to do with these matters.

11636

By Mr. Ransom:

Q. With respect to water gas tar?

A. Yes, but that is preliminary to the contract.

The Master: We only want the contracts.

The Witness: Well, that is preliminary.

The Master: Did you make a contract with them?

The Witness: Yes, in the form of letters.

The Master: Suppose you offer those first.

Mr. Ransom: I offer in evidence the ammoniacal liquor contract already described; the coal tar contract already described; the letter of the Consolidated Gas Company dated August 24, 1910, signed by R. A. Carter, vice president, thereunto annexed; letter of the Barrett Manufacturing Company, dated September 9, 1910, replying to the letter of August 24, 1910; the contract of July 1, 1918, for drip oil, already described; the contract of January 1, 1918, for water gas tar already described.

11637

The Master: You might as well offer these two letters also.

Mr. O'Brien: Wouldn't it be better to offer them singly?

The Master: No, I want you to look at them all at once.

Mr. Ransom: I also offer letter from the Consolidated Gas Company, by W. A. Addicks, vice president, dated July 2, 1919, to the Barrett Manufacturing Company; letter of July 10, 1910, of the Barrett Manufacturing Company, to Mr. Addicks, in reply to the letter of July 2nd.

Letter of Mr. Addicks to the Barrett Company under date of July 12, 1919.

11639 Letter of the Barrett Company to Mr. Addicks, under date of July 15, 1919.

Letter of the Barrett Company to Mr. Addicks under date of July 24, 1919.

Letter dated August 1, 1919, from Mr. Addicks to the Barrett Company.

Letter of the Barrett Company to Mr. Addicks under date of August 9, 1919.

The Master: Show all those to the other side.

Mr. Clark: I might say while Mr. O'Brien is looking over those that there is one contract which refers to an appendix and blueprint.

The Master: I have it before me here.

11640 Mr. Clark: The appendix?

The Master: The paper that refers to a blueprint and appendix.

Mr. Clark: It is the drip oil contract.

Mr. Ransom: The blueprints referred to in this contract of January 1, 1918, as the drip oil, is the appendix and blueprint drawing attached to and being part of the contract of the parties of the first day of October, 1915. There is no new blueprint; they refer to the blueprints in the previous contract, describing the method of test of drip oil, distillation test.

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The Master: That language is, Mr. Clark, a blueprint attached to a contract of October, 1915. It says, "attached to and forming part of a contract dated the first day of October, 1915." Suppose you state your objections, Mr. Chambers, if you have any of these contracts.

Mr. Chambers: I will keep still on this occasion, so as to expedite the trial.

Mr. Clark: I object to that one contract on the ground that the 1915 contract has not been put in evidence with the appendix thereto.

11642

Mr. O'Brien: Approaching this correspondence, I would like to call your attention—I do not think you have seen that—to these letters, before you admit them in evidence. I refer to the correspondence during the current year.

The Master: You are referring to this folder which contains certain letters.

Mr. O'Brien: It is not an agreement at all.

The Master: That is what they claim is their arrangement, consisting of this correspondence.

Mr. O'Brien: My contention is it does not prove anything. It is not a contract; it is not an agreement that binds.

11643

The Master: That is all they have got.

Mr. O'Brien: It is a statement there that allows the Barrett Company to pay anything they want by being able to say how much tar they burn under their boilers, or how much they sell to the city, or any other victim. I object to them all on the ground they are incompetent, irrelevant, particularly on the ground it has not been shown they were approved by the executive committee. On the further ground that as to several of them, the men who made them have not identified them on the witness stand. In

one instance the correspondence with reference to a contract was apparently carried on by Mr. Carter, who is in court and who has not taken the witness stand to explain the nature of the correspondence.

I object on the further ground that there was not competitive bidding, that it has not been shown that this was the best use that might be made of the residuals; on the ground that it has not been shown that William Hamlin Childs or the other people in control of the Barrett Com-
11645 pany are not stockholders in the Consolidated Gas Company. That contract made for ten years, covering the product of the company's plant, or a residual, is on its face such a wanton sacrifice of the properties of the complainant as to constitute a paper not admissible in this case, where we are concerned with the cost of making gas.

The Master: The objections are overruled and exceptions allowed.

The ammonia liquor contract dated the first day of July, 1910, is received in evidence and marked Complainant's Exhibit No. 327.

11646 The coal tar contract of July 1, 1910, is received in evidence and marked Complainant's Exhibit No. 328.

The drip oil contract of January 1, 1918, is received in evidence and marked Complainant's Exhibit No. 329.

The water gas tar contract of January 1, 1918, is received in evidence and marked Complainant's Exhibit No. 330.

The folder containing the correspondence of the Consolidated Company with the Barrett Company, consisting of letters of Consolidated

Gas Company to the Barrett Company, beginning July 2, 1918, and ending with a letter from Barrett Company to Consolidated Gas Company, Mr. Addicks, vice president, August 9, 1919, is received as one exhibit and marked Complainant's Exhibit No. 331.

By Mr. Ransom:

Q. Have you also produced, Mr. Addicks, an agreement made on the 19th of April, 1917, with the Barrett Company, with respect to water gas tar, which preceded the agreement just received in evidence?

A. Yes, sir. That is the agreement of the 19th day 11648
of April, 1917.

Q. Have you also produced, Mr. Addicks, the agreement with the Barrett Company, dated October 1, 1915, with respect to drip oil, to which is annexed the blueprint and statement of method of distillation test which is referred to in the drip oil contract, Exhibit No. 329, the contract of January 1, 1918?

A. Yes, sir.

Q. And is this such contract (indicating)?

A. Yes, sir.

Q. Have you produced the contract made January 1, 1917, with the Barrett Company as to drip oil?

A. This contract is until June 30, 1917, or during 11649
the continuance of the war in Europe; in no event to be beyond December 31, 1917.

Mr. Ransom: I offer those in evidence in connection with those already offered.

The Master: Show them to Mr. O'Brien.

Mr. O'Brien: I note here a provision that the distillation shall be carried on in a room free from draft.

The Master: Well, that doesn't mean this court room.

Mr. Ransom: I think counsel is simply delaying this matter unreasonably. He has had fifteen or twenty minutes.

The Master: Well, he is pretty nearly through. Have you any objections to these contracts?

Mr. Chambers: No.

The Master: Mr. O'Brien, I suppose your objections are the same that have been interposed to the other contracts.

Mr. O'Brien: Before making my objection I would like to ask the witness.

11651 By Mr. O'Brien:

Q. These initials, E. H. A., W. H. R., E. G. L., and D. N. J., who are they?

Mr. Ransom: I don't think those questions go to the admissibility of these papers.

The Master: I will let him ask it. I assume they are O K's by various officials before it is approved and signed.

A. E. N. L. is Dr. Love.

By the Master:

Q. He is the chemist?

A. Yes, he was the chemist. He died a couple

11652 of weeks ago.

Q. I suppose he O K'd it as to the technical features of it?

A. Yes, sir. I think E. H. A. is Mr. Amberg.

Q. They may be the O K's of officials of the other companies?

A. Yes. Dr. Love's I distinctly recognize.

By Mr. O'Brien:

Q. And it is marked, "Approved, E. H. A., W. H. B., W. R. A. and E. B. C." Will you state who they are?

A. I think H. E. A. is Mr. Amberg again; W.

H. B. is William H. Bradley; W. R. A. is Walter R. Addicks, G. B. C. is George B. Cortelyou.

By Mr. Ransom:

Q. Who is Mr. Bradley?

A. Chief Engineer of the Consolidated Gas Company.

Mr. O'Brien: I object on the same grounds—

The Master: I have noted the same objections as to the other papers, and the same ruling.

The first paper received in evidence is the agreement of October 1, 1915, between the Barrett Company and the Consolidated Gas Company. 11654

Paper received in evidence and marked Complainant's Exhibit 332.

The Master: The next one is dated the first day of January, 1917, between the Barrett Company and the Consolidated Company.

Paper received in evidence and marked Complainant's Exhibit 333.

The Master: The next one is the agreement of the 19th of April, 1917, between the Consolidated Gas Company and the Barrett Company. 11655

Paper received in evidence and marked Complainant's Exhibit 334.

Q. Mr. Addicks, have you produced here an agreement, or the agreement made on July 1, 1913, with the Standard Oil Company of New Jersey, for the supply of gas oil during the calendar year, 1914?

A. Yes, sir.

Q. Is this such agreement?

A. Yes, sir.

The Master: Show that to the other side.

11656 Walter R. Addicks, Direct.

Q. Subsequently, and on or about the first day of July, 1914, were you able to obtain a modifying agreement prescribing a lower price per gallon?

A. Yes, sir, and for an increased period of time, an increased quantity and increased period of time.

By the Master:

Q. Is this paper that Judge Ransom has in his hand that paper?

A. That paper is the contract in question.

Q. Signed by both parties?

A. Signed by W. R. Addicks on the part of the
11657 Consolidated Gas Company, and F. H. Bedford on the part of the Standard Oil Company.

The Master: You offer these two papers in evidence?

Mr. Ransom: I offer the two papers in evidence.

By Mr. Ransom:

Q. Did you also receive a letter from the Standard Oil Company by Mr. Bedford, dated August 17, 1914, with respect to the contract of July 1, 1914?

A. Yes, sir.

Mr. Ransom: I offer in evidence contract
11658 dated July 1, 1913; the contract dated July 1, 1914, and the accompanying letter from the Standard Oil Company of New Jersey, dated August 17, 1914.

Mr. O'Brien: I am trying to make out this Standard Oil signature here. It doesn't look like Mr. Bedford's signature, Mr. Addicks. What is it on that 1914 contract?

The Witness: That looks like Mr. Teagle.

Q. Walter Teagle is that?

A. W. C. Teagle.

Q. Walter C. Teagle?

11659

A. That is the way it looks to me.

The Master: I take it that you object to these papers upon the same grounds on which you objected to the other Standard Oil contracts?

Mr. O'Brien: Yes, sir.

The Master: Same ruling and exception. We will take in evidence first the paper of July 1, 1913.

Paper received in evidence, marked Complainant's Exhibit 335.

The Master: The next will be the letter of August 17, 1914, cancelling the July 1, 1913, contract.

11660

Letter received in evidence, marked Complainant's Exhibit 336.

The Master: The next will be the contract of July 1, 1914.

Contract received in evidence, marked Complainant's Exhibit 337.

Q. Mr. Addicks, was the price at which these oil contracts were made, the best price which you could obtain under the conditions and for the quantities of oil for the supply of the Consolidated Gas Company at that time?

11661

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial. The public records show that other companies bought it cheaper at the same time.

The Master: Mr. O'Brien, you have, I think, elaborated your objection to the other questions relating to other years. I think if you say "upon the same grounds already stated," your rights will be protected.

Mr. O'Brien: I thought you might have changed your mind overnight and might make another ruling.

The Master: I don't know where you get that notion. You haven't seen me change my mind, have you?

Mr. O'Brien: I saw you change it today.

The Master: Where?

Mr. O'Brien: On the admission of these tabulations showing the price of oil.

The Master: Objection overruled and exception allowed. Mr. Addicks, will you state whether it was the best price you could get at that time for those quantities?

11663 The Witness: Yes, sir.

Mr. O'Brien: How can you add anything by his saying it is the best?

The Master: That is his statement. You can find out on cross-examination what he bases that statement on.

Mr. O'Brien: To use your words, it doesn't get you anywhere.

The Master: I don't think it does.

Mr. O'Brien: He would not say he made a mistake, and I didn't have my head with me that time.

The Master: That is correct.

11664 Mr. Ransom: Any business man oftentimes gets very great advantages, and at other times he might have gotten a better price.

Q. Mr. Addicks, these contracts which have been received in evidence in relation to by-products, which prescribe a basis on which the price should be determined from year to year, is it your judgment that the prices received by the Consolidated Gas Company under those contracts were the best prices which could have been received or been secured at the time and under the conditions?

Mr. Chambers: I object to that.

The Master: Objection sustained. I will allow the witness to say whether he knows of any place or any concern that he could have gotten a better price from at that time.

Mr. Chambers: Five years ago, when he made the contract?

The Master: I am going to let the witness say, as he undoubtedly will say, that he got the best price he could, and then permit you gentlemen to cross-examine. This witness of course will testify that he got the best price he could, 11666
and made the best contracts he could.

Mr. O'Brien: Could you expect him to give any other answer but one, and isn't that the standard by which the admissibility of the question is to be determined?

The Master: I do not expect any answer but an affirmation of the statement that he does not know of any place where he could have done better at the time. Do you, Mr. Addicks?

Mr. O'Brien: Here is what I have in mind, is how this record is going to look. Here is gas oil that perhaps constitutes fifty per cent of the expenses of this company, and we are go- 11667
ing to let a witness under a big salary of this company say that he did the best that could be done, simply characterizing his own work. It is a conclusion that is valueless, and if it is valueless, why should we put it in the record.

The Master: I will let Mr. Addicks state whether he knows any place or any concern that he could have made better terms with at the time he made these various contracts.

Mr. Ransom: Will you answer the question of the Master?

The Witness: I don't know of any place that I could have obtained better conditions or prices than appears in the contracts.

Mr. Ransom: The defendants may cross-examine. Now, I am conforming to the Master's ruling. There are certain phases of the case on which I may desire to call Mr. Addicks, but so far as laying a foundation and supplying the connection for the testimony which the Master has desired in connection with the cost of manufacture of gas, I have covered the two things
11669 concerning which I called Mr. Addicks.

The Master: I will permit cross-examination.

Mr. Chambers: I submit he ought to finish with Mr. Addicks.

The Master: I have indicated to Judge Ransom and to other counsel that I would like to have all the proof come in now, with the direct and cross and anything that goes with it, with reference to the cost of making gas. Now, as I understand Judge Ransom's statement, it will not be necessary for him to ask Mr. Addicks any more questions, or to recall him again on that branch of the case, namely, the cost of making
11670 the gas, and I am going to ask you to cross-examine the witness so as to complete his testimony on that branch of the case.

Mr. Chambers: What do you think, since it is close to the hour of adjournment, if we adjourn now and start in fresh Monday at 1:15?

The Master: No. We have got an hour to go yet, or pretty close to it, and I will ask you to go ahead.

Mr. Ransom: May I just say one thing? Mr. Addicks states that with respect to 1919 drip

oil, or holder oil, there are certain letters which he hasn't here, but which will be produced at the next hearing.

Mr. O'Brien: They ought to be all in before we start to cross-examine.

Mr. Chambers: I take it that you are not quite through, Judge?

Mr. Ransom: I am through.

The Master: Oh, you go ahead with your cross-examination, Mr. Chambers.

Mr. O'Brien: I think there is a question unanswered. 11672

Mr. Ransom: There is no question.

Mr. Chambers: You withdraw the question?

Mr. Ransom: I did not ask any question.

CROSS-EXAMINATION BY MR. CHAMBERS:

The Master: Mr. Chambers, I am going to give you the widest possible latitude in attacking the good faith of these contracts and prices paid.

Mr. Chambers: Thank you.

The Master: But I shall expect you at the same time to co-operate with the Master in only asking questions that have some relevancy and materiality to the point to be developed. In other words, I can see how you might want to show 11673 that there were common directors to both companies, and what efforts were made to get prices from other companies, the size of other oil companies, their facilities to deliver, and all that; but having in mind that, I want you to develop whatever there may be as bearing upon these contracts and attack upon them, but don't let us waste any time.

Mr. Chambers: Well, I will do that. I endeavor to do that in this and all cases.

The Master: Well, I know, but I know when I try a case and I want to stall until Monday and I have three-quarters of an hour, I can stall it all right, but I just want to tell you that I am going to ask you not to stall, because you can use three-quarters of an hour very efficiently today.

Mr. O'Brien: Wouldn't it be a time-saving plan if adjournment were taken now, at a quarter past twelve, to give the defendants time to look over the contracts?

The Master: I don't think so. Without know-
11675 ing anything about this case, without knowing the line of the defense and the information that you have, I can undertake to take the floor now and cross-examine Mr. Addicks for three-quarters of an hour on essential matters bearing upon the price paid in this case and the relations between the companies, taking this contract, and accomplish something, and I expect counsel to do the same.

Mr. O'Brien: Well, I might say to your Honor that this goes to the proposition we have had up many times, that if the complainant wanted to
11676 expedite and wanted frank disclosure, they might have given us copies of the contracts sometime ago.

The Master: You should have asked for them. You knew they had contracts, you were at liberty to ask for them, and if they had not given them I would have directed them to give them to you.

Mr. O'Brien: They have been making a bluff of giving us papers. You notice the—

The Master: I think both sides are bluffing it once in a while. If you wanted these contracts, you could have asked for them a month or two or three months ago, and if they had not been

delivered, I should have directed them to be delivered to you.

Mr. Ransom: Some of these contracts were exhibits offered by the city in the prior case.

The Master: Yes.

Q. Mr. Addicks, you, of course, are under salary with the company of which you are vice president?

A. Yes.

Q. What is your salary?

Mr. Ransom: I object to the question as immaterial, irrelevant and incompetent.

The Master: I will allow it. 11678

Mr. Chambers: Are you afraid to have Mr. Addicks state his salary?

Mr. Ransom: No, but I object to your doing what I regard as an improper thing. The fact that the Master does not agree with me does not alter my view.

The Master: I will let him show his salary, and to that extent his interest.

The Witness: $22,500.

Q. Were you under that in 1905, when this contract, Exhibit 318, was approved?

Mr. Ransom: I object to that as immaterial and incompetent. 11679

The Master: Overruled.

Mr. Ransom: What has 1905 got to do with this 1918?

The Master: Overruled.

Mr. Ransom: Exception.

A. I don't remember.

Q. You don't remember what you were getting then?

A. No, I don't remember at that particular time.

Q. I notice that this Exhibit 318 was approved on October 24, 1905?

A. Yes, sir.

Q. Now, that must have been under negotiation perhaps a month or two before that date, was it?

A. I don't recall the conditions concerning the contract.

Q. Well, you would say, wouldn't you, that it had been discussed somewhat prior to the date it was approved, surely?

A. I think that there would be a discussion prior to that date, yes, sir.

Q. Did you look around—what effort did you make
11681 to ascertain what the price of oil was before you entered into that agreement, speaking of Exhibit 318?

A. In this case Exhibit 318?

Q. Yes. What effort did you make to ascertain what price other companies—or what the price was of oil in this locality?

A. I do not recall the conditions existing at that time, in 1905.

Q. That is, your memory now, is poor on what transpired prior to the making of this agreement?

A. Yes. It is a long time ago, and I haven't had an opportunity of refreshing my memory.

11682 Q. You cannot state what efforts you made in behalf of your company to ascertain whether this price, the price set forth in Exhibit 318, was a good one for your company?

A. Well, I know it was a good one.

Q. You are satisfied of that?

A. I am satisfied definitely about that.

Q. You are satisfied—was there any other company at that time in this locality buying as much oil as you set forth in this exhibit, that you know of?

A. No, sir.

Q. For instance, taking the Bronx Gas & Electric

11683

Company, they do not buy very much oil because that is a small company?

A. That is right.

Q. And take the Brooklyn Borough Company, that is a much smaller company than this?

A. Yes.

Q. They could not buy very much oil?

A. No, not as compared with this company.

Q. The Kings County Lighting Company is also a small company?

A. That is right.

Q. It must necessarily be a small buyer? 11684

A. That is right.

Q. It would naturally follow that your company, buying so many million gallons, 255,000,000, ought to have a better price than these other companies I have spoken of, whose needs were not so great; isn't that so?

A. I think that that question would be best answered by those who produce the oil.

Q. No, did you not expect always to obtain a better price, because of the large quantity you bought, than these other small independent companies?

A. We would endeavor to get a smaller price on account of the additional amount, but whether we would or not is another matter. 11685

Q. As a matter of fact, you did not make as good a bargain, did you, as some of these other companies?

A. Well, I do not know what the prices of those other companies are from memory at the present time, but there were certain times—

Q. (Interposing.) Did you find out at that time?

A. I do not remember.

Q. For instance, did you find out what the Bronx Gas & Electric Company was paying?

The Master: In 1905?

Mr. Chambers: In 1905 or 1906. Say in January, 1906.

A. I don't remember.

Q. For instance, did you know what the Brooklyn Borough Gas Company was paying for oil in August, 1905?

A. As of that date?

Q. Yes; August, 1905.

A. I cannot recall that.

Q. Did you know as a matter of fact that they made
11687 a contract in August, 1905, to pay only three cents?

Mr. Ransom: I object to the question. I do not think that is a proper method of cross-examination. It is putting into the record a price which may not have been a delivered price, may not have been the same grade of oil—was not a delivered price in my judgment, from my knowledge of the Brooklyn Borough's affairs.

The Master: Had you finished your question, Mr. Chambers?

Mr. Chambers: Yes, I think I had.

The Master: Read it.

Mr. O'Brien: Would it not be better, Mr.
11688 Master, to come right out and meet that situation in an open way?

Mr. Ransom: I always meet every situation in an open way.

Mr. O'Brien: Not every situation. In the light of a quick decision, your Honor, might not that be the best?

The Master: I want to hear that question.

(The question was then repeated as follows):

"Q. Did you know as a matter of fact that they made a contract in August, 1905, to pay only three cents?"

Mr. Chambers: A gallon?

The Master: I am going to permit the question to be answered, because whatever harm there is has already been done by putting that statement on the record, and I think it would be best to have the witness's answer to it. Did you know that in August, 1905, the Brooklyn Borough had made a contract of three cents?

The Witness: As of that date?

The Master: Yes.

The Witness: I do not know, your Honor, whether I did or not. 11690

Q. Do you know it now from some memorandum you have?

A. I have a memorandum here of certain prices paid by other companies.

Q. Have you the Bronx Gas & Electric Company contract of August, 1905?

A. I have not the contract.

Q. Have you the price of three cents a gallon delivered?

Mr. Ransom: I object to that.

The Master: I thought I had intimated to you, Mr. Chambers, that I did not think you ought to put prices in in that way. Not that it proves anything, but I do not think it ought to be on the record. 11691

Mr. Ransom: It is not proper.

The Master: You can ask the question as to what the price was to this company at any time during that period.

Q. What price does your table show the Bronx Gas & Electric Company paid?

Mr. Ransom: I object to the question. It assumes that the witness knows. Ask him if he knows.

Mr. O'Brien: The witness's answer here that in his judgment he made the best contracts that could be made, implies that he knew what other people were paying. How could he characterize his own bargain as the best unless he knew what others were paying at the same time in other markets?

Mr. Ransom: It does not appear that the witness knows now.

The Master: Let us find out whether he does or not.

11693 Mr. O'Brien: This is to the point that it is proper cross-examination.

Mr. Ransom: I think Mr. Chambers should be competent to conduct his cross-examination.

By the Master:

Q. Mr. Addicks, you say you had some sort of a table showing prices?

A. Yes, I have a chart.

Q. Who made up that chart, or how did you make it up?

A. It was made up in my office.

Q. Under your supervision?

A. Under my supervision.

11694 Q. From your information?

A. Some of the original was undoubtedly made up by myself personally.

Q. Are you satisfied that the matter on there is correctly stated, so that you can state what your information was?

A. Your Honor, I cannot state as of what date I had this information. That is the difficulty in regard to the question.

Mr. Chambers: When was that made up?

Mr. O'Brien: That was post mortem, I suppose.

The Witness: There were certain things made up from time to time, with respect to Lima crude oil, Pennsylvania crude and Standard White oil. Those are definite at the time.

Q. Where did you get that information?

A. Those come from the Journal of Commerce quotations.

Q. How about information as to what other gas companies paid; where did you get that from?

A. I am doubtful as to where that information came from. I am inclined to think that some of it came from an investigation which was made, in which it 11696 was disclosed what these other companies were paying. But whether I knew in each particular case what the prices were as of these dates, I do not know now.

Q. What I am trying to get clear in my mind is this: I do not want you to testify to something that may not be the fact, but would you be able to state as a fact what the Brooklyn Borough Gas Company paid for oil in August, 1905, from any memorandum you have?

A. No, it is only what is reported they paid. I do not know it as a fact.

Q Do you believe the report to be correct, or did you when you put it on your chart? 11697

A. Yes.

The Master: Then I am going to let you tell us if you believe it is correct. What was the last question Mr. Chambers asked?

(The stenographer then read the question referred to as follows):

"Q. What price does your table show the Bronx Gas & Electric Company paid?"

The Master: Paid when?

Mr. Chambers: In August, 1905, and from then on for several months.

The Witness: It does not indicate for 1905.

By Mr. Chambers:

Q. Does it for 1906?

A. Yes, having in mind that these—

Q. (Interposing.) No.

A. Pardon me; this is part of my answer.

Mr. Ransom: Let him finish his answer.

A. (Continued.) Having in mind that my chart is in colors, I am identifying it by the color, which is shown upon the side, which would indicate four cents.

Q. That is the Brooklyn Borough Gas Company?

11699 A. No, the Bronx.

The Master: In 1906, is that?

Mr. Chambers: That is January, 1906.

The Witness: Yes, sir, during 1906.

Q. How far back does that run, does your record show?

A. That is the first record, 1906.

Q. That figure of four cents is compared with your figure of 4.29 for the same period; isn't it?

Mr. Ransom: I object to the question.

The Master: That is not correct. His average for that year was 4.045768, or 4-1/2 cents.

11700 Mr. Ransom: And it does not appear that that was the delivered price.

The Master: No, that is what I am going to let the witness explain.

Mr. Ransom: It does not prove anything as to the quality. It may have been very different oil.

The Master: Correct. All he is asked is, what did the Bronx Borough Gas Company pay for the oil that they used in 1906, as he understands it?

Q. The four cents that you stated the Bronx Gas &

Electric Company were paying compares with your price in this contract, Exhibit 318, does it not?

Mr. Ransom: I object to the question.

A. Not necessarily.

Q. Wherein is there any difference?

A. Well, I do not know what that oil, that 4 cent oil, is in that case, whereas it is expressly stated in our case.

Q. You do not know what company they purchased from? A. No, I do not know where they purchased at this time, nor the gravity, nor the conditions which surround the oil. I only know the oil expressed in 11702 our own contract.

Q. This Bronx Company makes gas; you know that?

A. Yes.

Q. Take the Brooklyn Borough Gas Company; do you know what they were paying for oil in August, 1905?

The Master: He says his chart does not go back as far as 1905.

The Witness: No, I said as far as the Bronx Gas & Electric Company is concerned.

Q. How about this company?

The Master: The Brooklyn Borough?

Mr. Chambers: The Brooklyn Borough for 11703 1905.

The Master: Have you got that, Mr. Addicks?

The Witness: Yes. This indicates about 3 1/2 cents for a portion of the gas.

Q. When does it begin—August? Isn't that 1904?

A. No, it runs into 1905.

Q. Then after August, 1905, is it not three cents?

A. Three cents after August, 1905.

Q. Doesn't that three cents that the Brooklyn Gas Company paid for oil compare with your price set forth in Exhibit 318?

11704 Walter R. Addicks, Cross.

Mr. Ransom: I object to the question.

The Master: I will not allow that.

Mr. Ransom: It does not show when the contract was made.

The Master: That is wasting time. You can ask Mr. Addicks if he knows whether that was the same oil that he was getting.

Q. Do you know whether that was the same oil that you were buying under this Exhibit 318?

A. I do not know at this time.

Mr. Chambers: I think I ought to be permitted
11705 to ask him if the two prices are not comparable.

The Master: Not to compare, no; that is argument.

Mr. Ransom: He does not know when the contract was made.

Mr. Chambers: Maybe he does.

Mr. Ransom: Well, ask him if he does.

The Master: The next question.

Q. Just to clean up on those two, did you when you made this agreement on November 1, 1905, know what you have just told me about the price of three cents being paid to the Brooklyn Borough Gas Company
11706 for gas oil?

A. It is a long time ago and I do not recall at this time. I can only have my impression.

The Master: What is your impression?

The Witness: I do not think I did.

Q. In gas oil that is a considerable difference between your contract and the three cents?

A. I do not know whether that was gas oil.

Q. Beg pardon?

A. I do not know definitely whether that was gas oil; it may have been an enriching oil.

Q. Have you anything else on your chart except gas oil?

A. Well, it refers to enriching oil, but whether it was oil such as we were purchasing I do not know.

Q. You have no doubt it was oil they purchased to make gas with, do you?

A. Yes, but—

Q. You mean you have?

Mr. Ransom: I object to this inquiry. For instance, right on the face of this contract this company was buying two different grades of oil at that time, at two different prices, one very much lower than the other.

Mr. O'Brien: Is it to be assumed that that 34 11708
degrees gravity is anything but a bluff?

The Master: Gentlemen, that will have to stop.

Mr. O'Brien: Counsel is referring to something on the face of the contract.

The Master: Please be quiet, Mr. O'Brien. Judge Ransom, this feature of the case is of such importance and involves so much that I am going to permit very wide latitude.

Mr. Ransom: I want it.

The Master: I do not want comparisons and do not want wasteful questions, but I want every 11709
question that will tend to bring out the fact as to whether this company was paying more than they should have paid for gas oil.

Mr. Ransom: I framed my direct-examination so as not only to invite it but require it.

Mr. O'Brien: It is framed all right, there is no doubt about that.

The Master: That is uncalled for. Proceed, Mr. Chambers.

Mr. Ransom: Was the last question answered?

The Master: He may answer it now.

A. No, I have no doubt.

11710 Walter R. Addicks, Cross.

Q. In your contract here, Exhibit 318, I see that for a gravity of twenty-eight the price was .25, and for a gravity of 34 the price was 4.785 cents?

A. That is correct, as I remember it.

Q. Does your chart show what the Kings County Lighting Company was paying for oil in July, 1905?

Mr. Ransom: I object to the question on the ground that it does not appear for what oil the Kings County Lighting Company was paying; it does not appear when the contract was made; it does not appear as to the gravity or the quality of
11711 the oil; and it does not appear where delivery was made.

The Master: I will allow the question.

Mr. Ransom: Exception.

A. No.

Q. Does it show any price in 1905?

A. No.

Q. In 1906?

A. I think it does.

Q. What is that, three cents?

A. Yes.

Q. You haven't any doubt but what that was gas oil? A. Why, Mr. Chambers, as you are asking me
11712 the questions some matters are coming back to me. All these companies during this period were manufacturing gas, and as I recall it were failing continually to furnish twenty-two candle power gas. I know nothing at this time about the quality of oil, but I know they were failing to supply twenty-two candle power gas at the time when we were supplying twenty-two candle power gas.

Q. You mean to charge the Bronx Company and the Brooklyn Borough Gas Company, and the Kings County Lighting Company, with failing to furnish

twenty-two candle power gas during the time you are speaking of?

A. If that is the date I think it is, there came up in the former gas case—that was very thoroughly set forth in my testimony, showing the amount which they paid, which came from the testimony that was put in, what they were paying for oil, and the number of failures per annum according to the city tests. I do not recall specifically the year, but I suspect it is these years.

Q. What about your own company during that time? 11714

A. I think we did not fail at any time during that period.

Q. To make twenty-two candle power gas?

A. Twenty-two candle power gas at the same time.

Mr. Ransom: The statute took effect—

The Witness: Prior to the date of the statute it was twenty-two candle power.

Q. Wherein would the price they paid for the oil have anything to do with their making twenty-two candle power gas?

A. As to the quality of the oil they bought for that price.

Q. They would use more oil perhaps, is that the only difference? 11715

A. They might use more oil, yes.

Q. And make twenty-two candle power gas? A. Yes.

Q. So the price they were paying would not have anything to do with the candle power?

A. The price times the number of gallons of oil would represent the value of the oil.

Q. We really have in mind the price of oil?

A. I don't think you can separate the price and quality.

11716 Walter R. Addicks, Cross.

Q. But you don't know now anything about the quality of oil they were buying?

A. I do not recall the details.

Q. Take the New York & Queens Gas Company. Does your chart show what they were paying for gas oil in 1905?

A. I cannot distinguish the New York & Queens on this chart.

Q. How about the Queens Borough?

A. 1905.

Q. Yes.

11717 A. Somewhere in the vicinity of three and a half cents, I think it is.

Q. Three and a quarter cents, isn't it?

A. No, it would be more than three and a quarter.

Q. Now, take that same company in 1906, what were they paying, the Queens Borough Gas Company?

Mr. Ransom: I object to that question. Here is a situation where they are endeavoring to test —in addition to the grounds already indicated— they are endeavoring to compare a contract price made for the future, that is to say, 1906 and 1907 and 1908, with a price which was paid by some other company for an undisclosed quality of

11718 oil at some undisclosed previous time. For example, the contract of the Brooklyn Borough or of the Queens Borough, which controlled 1905, deliveries to the Queens Borough, may have been made in previous years, in any previous year before that time.

The Master: That is argument. I am going to allow the question.

Mr. Ransom: The price made for the future is not comparable with the price charged under some other contract with some other company previously made.

11719

The Master: I appreciate that, but I will allow it.

A. The Queens Borough Gas & Electric, something between three and three and a half cents.

Q. In 1906?

A. For a portion of the time at the same price as during 1905, the first three months.

Q. Can you identify 1906, for the New York & Richmond Gas Company, how much they were paying?

A. I am a little uncertain on account of the color.

11720

Q. Perhaps I can help you out. Isn't it 2.875 cents?

A. I have one of a color that might be the New York & Richmond, which is something under three cents.

Q. That is probably it. Now, the Kings County Lighting for 1906. Perhaps I can save time. 3.40 cents, isn't it?

A. 1906?

Q. Yes, Kings County Lighting Company, three cents for part of it and 3.40 for the other?

A. I cannot distinguish that price here for the Kings County.

Q. What does your price look like?

11721

A. For 1906?

Q. Yes.

A. It looks like three cents.

Q. That is for the Kings County Lighting?

A. Yes.

Q. Now, the Brooklyn Borough Gas Company in 1906, what does your chart indicate?

A. A portion of the year I should say somewhere around 3.60 or thereabouts.

Q. It is 3.625.

Mr. Ransom: I object to the statement of

11722 Walter R. Addicks, Cross.

counsel. The whole thing is entirely unfair and incompetent.

A. I have no demarkation here except half cents.

Mr. Chambers: I withdraw the statement.

Q. Now, your price of cost that you were paying in 1906, is set forth on this Exhibit 318 for the entire year I take it?

Mr. Ransom: Which quality?

Mr. Chambers: Well, the price is set forth there for all qualities.

The Master: Both qualities were higher than
11723 the price at which these other companies were buying gas oil.

Mr. Ransom: For the kind of gas oil they were buying?

The Witness: Yes, that covers 1906.

Q. And Exhibit 326 shows the average price under your contract?

A. 1906, yes.

Q. Do you recall now whether you had these prices that have been given by you for 1906, for these other companies before you when you made this agreement, Exhibit 318?

11724 A. No.

Q. You don't recall, they might have been and might not have been?

A. My impression is that this matter came out at the time of the 80 cent gas case.

Q. In any event, these companies seem to have been buying oil, of whatever quality it was, or whatever gravity it was, much lower than your contract?

Mr. Ransom: I object to that on the ground that it does not appear when those contracts were made.

The Master: Objection sustained.

11725

Q. All these companies which you have spoken of, with the exception of your company, were small companies?

A. Yes.

Q. Did you testify in regard to the 1907 price for oil, do you recall?

The Master: Yes, of course he did. The average price was .045114.

Q. Did you have a contract for 1907?

A. I just referred to it. 318 ran into 1907.

Q. How long did it continue, can you tell?

11726

A. This is for the period beginning November 1, 1905, and ending June 30th, 1908.

Q. Now, in 1907, can you tell me what the New York & Richmond Gas Company was paying for oil per gallon, in 1907?

Mr. Ransom: Are you asking him whether he knows?

Mr. Chambers: What his chart shows, or whatever he has to look at.

Mr. Ransom: I don't believe that has any probative force in this case.

The Master: The witness testified that he made up his chart from statements made for you, which he says he believed correctly states the information. I do not believe it has much probative force.

11727

Mr. Ransom: There was some investigation made into these matters by some other body years afterwards—

The Master: I am going to take it. Does your chart give the information that Mr. Chambers just asked for?

Q. The one I asked you about is the New York & Richmond Gas Company for 1907, the price they were paying for oil?

A. This would seem to indicate they were paying something a little under four cents.

Q. Now, the Kings County Lighting Company, 1907. What were they paying?

A. Something slightly under three and one-half cents. Let us understand these are all subject to the fact that these colors I am trying to read out as close as I can, in answer to your inquiries.

Q. Will you give me the price in bulk of the following companies, 1908; Bronx Gas & Electric Company—

11729 A. Price in bulk?

Q. I mean I am going to read a number of companies. Will that confuse you?

A. You will only confuse me if you do that.

Q. All right. Now, the Bronx Gas & Electric Company for 1908.

Mr. Ransom: I object to the question on the ground that what Mr. Chambers is endeavoring to do is by indirection and in an improper way to put into this record testimony which was taken in some investigation which he has not even described, made at a time which he has not even disclosed.

11730 The Master: Unfortunately for you, Mr. Ransom, so far as the technical objection is concerned, Mr. Addicks has testified that he has a chart which he believes to be correct.

Mr. Ransom: A chart which he made up from this investigation?

The Master: All right. I don't care where he got them from. He believes these figures to be correct for gas oil. Now, that don't prove it at all because not alone has it the element of uncertainty in it, because the chart is drawn in colors which may or may not be correct, but the witness

is simply telling what he believes from his information these other companies paid. It is testing his testimony with reference to the price that the Consolidated pays. It does not go any further, and we have got to take it.

Q. Bronx Gas & Electric Company, 1908?

The Master: I am not going to find as a fact from this testimony that the Bronx Borough Gas did pay this price for a particular kind of oil at a particular time. I won't do it. But it is proper cross-examination. Go ahead.

A. Apparently four cents, as near as I can locate it. 11732

Q. And part of the time four cents, and part of the time 3.10 cents, isn't it?

A. You don't have the 3.10. Nothing but 4 cents.

Q. How about the Brooklyn Borough Gas Company in 1908?

A. As near as I can say, for part of the year four and one-half cents.

Q. And the other part?

A. And the other part something over three and one-half cents.

Q. The Brooklyn Union Gas Company?

A. The Brooklyn Union?

Q. Yes, for 1908? 11733

A. Well, I have the same confusion of color. This is 1907, isn't it, you are asking?

Q. No, 1908.

A. No, you said 1907.

Q. 1908, the Brooklyn Union.

A. Were the others 1908?

Q. Yes.

A. Oh, I beg your pardon. I have been giving 1907.

Q. Well, let us go back to the Bronx Gas & Electric Company for 1908. To make that clear on the record—

11734 Walter R. Addicks, Cross.

A. Four cents for part of the period, and for another part something over three cents.

Q. Right.

Mr. Ransom: Now, I object to the comment of counsel.

Mr. Chambers: Right?

Mr. Ransom: How do you know it is right?

The Master: Don't make those comments.

Mr. Chambers: Right means to the part of the period. He is dividing two periods.

The Master: We will avoid argument if you
11735 don't make comments.

Mr. Chambers: You object to my adding the price agrees with the memorandum I have?

Mr. Ransom: Is your memorandum of any value?

Mr. Chambers: Then I consent the comment be stricken out.

Q. Now, Mr. Addicks, the Brooklyn Borough Gas Company for 1908?

A. Four and something over a half cent for a portion of the period, and dropping to something under three cents for another portion of the period.

Mr. Chambers: I will just smile with approval
11736 if counsel objects to my saying right.

Mr. Ransom: I object to the unfair methods pursued by the law officer of the State.

Mr. Chambers: I consent that what I said be stricken out.

The Master: Every second you waste with these side plays you are going to add to one o'clock. I will see if I can't stop this.

Q. Kings County Lighting Company, what did they pay for oil in 1908?

Mr. Ransom: I object to the question as incompetent in form.

The Master: Yes, objection sustained. What is your information?

Q. What is your information as to the price they paid?

Mr. Ransom: I object to the question, as it calls merely for the result of some investigation, which has not been disclosed.

The Master: That objection has been stated a number of times. Counsel can test this witness's testimony in the manner counsel is pursuing. I will take the testimony.

Mr. Ransom: Exception. 11738

A. Something in excess of four cents.

Q. For a part of the time?

A. Practically the entire year.

Q. Now, the New York & Queens Gas Company?

A. I am again in doubt in regard to that.

Q. Haven't anything for that company?

A. Well, it is difficult with the colors, the light, you know, on the colors.

Q. Well, isn't it around three cents?

The Master: Don't guess at it, Mr. Addicks, because it is entirely too important for guesswork, if you can't make it out.

The Witness: Well, the difference in these 11739
colors I am fearful of.

Q. Take the New York and Richmond Gas Company for the same year, 1908.

A. There are the same two colors arises on account of crossing each other.

Q. Take the Queens Borough Gas & Electric Company.

A. Queens Borough; the answer is correct for Queens Borough.

Q. What is it?

A. I am doubtful on account of confusion in colors.

11740 Walter R. Addicks, Cross.

Q. But you could give the New York and Richmond, could you?

A. The same thing is true here on these colors. I will try again. Something under 3 1/2 cents, so far as I can read.

The Master: For the New York and Richmond?

The Witness: New York and Richmond.

The Master: For 1908?

The Witness: Well, for a part of 1908; for the rest it was just under four cents.

11741 The Master: I am doubtful as to the efficacy of this proof. The witness has in his hand a chart with colors, with which he is attempting to follow certain lines. I see it in the witness's hands, and I am not inclined to take his evidence, because his chart is so difficult to follow. I can see the same thickness of red lines, the same thickness of blue lines, and the same thickness of green lines, and it is almost impossible to follow those lines along that way and get any definite result, and I am not disposed to take this proof for that reason.

Mr. Chambers: If he is working with that kind
11742 of matter and trying to formulate his judgment as to his company getting the best bargain, you can see how his statement falls to the ground.

Mr. Ransom: The witness has a right. When there is a public investigation, to make a summary of it.

The Master: Here is the situation. The witness does not testify that at the time he made these contracts he knew that. He has a chart here which gives him—upon which he has placed data which he believes to be correct.

Mr. Chambers: He doesn't say he did not use

that. He did not affirm nor deny whether it was right even. He said he does not know.

The Master: We will adjourn now until Monday at 1:15, and in the meantime, I shall ask Mr. Addicks if he will try to make up in some better form a statement giving this information that counsel is trying to get.

Mr. O'Brien: Oh, Mr. Addicks has a copy of what Mr. Chambers was reading from. Mr. Addicks took part in that investigation before the Public Service Commission, your Honor. He can come in refreshed. 11744

The Master: I have been inclined to take this proof, probably leading up to other questions to Mr. Addicks, as to price paid by his company, but I am not going to follow a complicated chart like this.

Mr. Ransom: Merely the fact that he has made a tabulation of something which was done by the Public Service Commission when Mr. Maltbie was commissioner, or at any other time—

Mr. Maltbie: Will you withdraw that statement? This was not made while I was there.

Mr. Ransom: I will withdraw it if it is untrue.

Mr. Maltbie: 1915. 11745

Mr. O'Brien: It was in the counselship of Ransom, I think.

Mr. Ransom: No, it was not in the counselship of Ransom. I was trying shirt waist cases in the city court then. That is not a competent standard. Even if the experts of the Commission were produced at this examination to testify, that would not be admitted.

Mr. Chambers: I am not trying to prove what these particular companies paid. I am trying to find out how searching was Mr. Addicks' investigation of oil prices generally during that time.

Mr. Ransom: That is not what he has been asked.

Mr. Chambers: I am finding out.

The Master: I think I am going to sustain further objections on this line. I do not think it is of any use to us.

Mr. Chambers: Why, it seems to me it goes right to the point.

The Master: How does it go to the point? Mr. Addicks in 1910 or 1912 or 1915, or some other year gathered together data as to what gas
11747 companies paid before.

Mr. Chambers: That is not the point. He doesn't say that. The point is, what investigation? Did he know what these companies were paying at that time for oil?

The Master: When we convene on Monday, so I may not be charged with having changed my mind overnight, I shall require counsel for the defendants upon the line of examination they are now pursuing, to test Mr. Addicks in the form of asking him whether he knew in 1905 and 1906, and during those years when he was making contracts for gas oils, what other companies
11748 were paying.

Mr. O'Brien: Maybe he could bring in a better chart in the meantime, your Honor.

The Master: I will direct counsel for the defendants, or I am giving notice to counsel for the defendants when we convene on Monday I am going to hold them to an examination as to just what Mr. Addicks did and what efforts he made to find out in those years.

Mr. Chambers: That is what I want to find out.

11749

The Master: But not in the form pursued during this hour.

Mr. Chambers: We would like copies of the contracts.

The Master: I wish you would do that, Judge Ransom.

Mr. Goetz: Not until Monday. It is a hard job.

The Master: No, it is not a hard job, Mr. Goetz. How many stenographers have you got in the gas company's business?

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Mr. Goetz: You mean running the gas business?

The Master: Yes.

Mr. Goetz: I suppose we have hundreds.

The Master: All you need is one stenographer for each contract, and you will have the job finished in an hour. You will see that copies of these contracts are furnished to counsel for the defendants before noon tomorrow, Saturday.

Adjourned to Monday, October 6, 1919, at 1:15 P. M.

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Last Complainant's Exhibit 337.
Last Defendants' Exhibit MM.